CLERK'S COPY.

Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 430

SPENCER KELLOGG & SONS, INC., AS OWNER OF THE MOTORBOAT "LINSEED KING," ETC., PETITIONER,

vs.

HILDA M. HICKS, AS ADMINISTRATRIX, ETC., ET AL.

No. 444

VERA ALEXANDER, ADMINISTRATRIX OF THE ESTATE OF JAMES ALEXANDER, DECEASED, ET AL., PETITIONERS,

vs.

SPENCER KELLOGG & SONS, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED OCTOBER 2, OCTOBER 7, 1931

CERTIORARI GRANTED NOVEMBER 23, 1931

(36,244, 36,258)

INDEX.

	PAGE
Statement	1
Petition	3
Schedule "A"—Annexed to Petition	10
Order for Ad Interim Stipulation	13
Affidavit of Appraisal and Value	15
Affidavit of Appraisal and Value	17
Order Appointing Commissioner to Receive Proof of Claims and Directing Issuance of Monition and Enjoining Suits	19
Restraining Order	23
Order of Reference for Appraisal	28
Monition	30
Answer	33
Answer of Hilda M. Hicks	41
Answer of Millicent Ifill	47
Answer of Padro Mitchell	50
Answer of Emma Gonzales Navas	56
Answer of Helen Roberts	64
Claim of Vera Alexander, as Administratrix, Etc.	75
Notation that Other Claims in Death Cases are Similar	81
Proof of Claim of Helen Roberts	82
Proof of Claim of Mary J. Martin	86
Proof of Claim of Joseph Cassid	88
Proof of Claim of Emma Gonzales Navas	90
Proof of Claim of Hilda M. Hicks	96
Claim of John Darco (Dominick Darco)	102
Notation that Other Claims in Personal Injury Cases are Similar	108
Proof of Claim of Darnley Barker	109
Proof of Claim of William H. Ice	111
Proof of Claim of Carl Bremer	113
Proof of Claim of Padro Mitchell	115
Objection to Claim	120
Notation that the Objections of the Petitioner to the Additional Claims are not Printed in Full	121

PAGE

Opinion of Judge Hazel, Dated March 15, 1928 122
Interlocutory Decree 142
Stipulation as to Report of Myer Nussbaum, Commissioner 147
Claimants' Exceptions to the Report of the Commissioner 148
Claimants' Exceptions to the Report of the Commissioner 160
Petitioner's Exceptions to the Report of the Special Commissioner 162
Petitioner's Supplemental Exceptions 177
Opinion by Judge Patterson, Dated December 17, 1930 180
Order to Show Cause 220
Affidavit of D. Roger Englar 222
Memorandum by Judge Patterson, dated February 9, 1931 225
Order Denying the Motion 226
Findings of Fact and Conclusions of Law 228
Final Decree 240
Statement as to Substitution of Attorneys 262
Claimants' Notice of Appeal 263
Notation that Similar Notices of Appeal are not Printed in Full 269
Assignments of Error 269
Notation that Similar Assignments of Error are not Printed in Full 275
Petitioner's Notice of Appeal 276
Petitioner's Assignments of Error 278
Testimony 285
Opening of the Case by Mr. Englar 286
Motion to Dismiss the Petition 804
Summation 1952
Testimony Before Commissioner 2015
Stipulation as to Exhibits 2362
Stipulation as to Record 2363
Clerk's Certificate 2364

Index.

PETITIONER'S WITNESSES:

	PAGE
Frank L. Meno:	
Direct	298
Wilson Rex:	
Direct	300
John Rohweder:	
Direct	302
Cross	318
Re-direct	383
Re-cross	390
(Recalled)	
Re-direct	488
Re-cross	494
(Recalled)	
Cross	623
Re-direct	642
Re-cross	645
Matthew M. Marshall:	
Direct	396
Cross	406
Re-direct	451
Charles W. Clayton:	
Direct	453
Cross	461
Re-direct	482
Re-cross	486
(Recalled in Rebuttal)	
Direct	1875
Cross	1876
Re-direct	1886
Re-cross	1887

PAGE

Herbert Balz:
Direct 495
Cross 503
Re-direct 553
Re-cross 553
(Recalled in Rebuttal)
Direct 1819
Cross 1823
Re-direct 1823

Harry J. Aldrich:
Direct 555
Cross 563
(Recalled)
Re-direct 1606
Re-cross 1616
(Recalled in Rebuttal)
Direct 1921
Cross 1922
Re-direct 1923
Re-cross 1924
Re-re-direct 1926

Harvey Barrett:
Direct 588
Cross 609
(Recalled)
Cross 647
Re-direct 717
Re-cross 722
Re-re-direct 724
Re-re-cross 725
(Recalled in Rebuttal)
Direct 1824
Cross 1841
Re-direct 1873
Re-cross 1874
(Recalled)
Re-direct 1941

Index.

PAGE

Charles E. Stover:
Direct 726
Cross 735
Re-direct 793
Re-cross 794
(Recalled)
Re-cross 1069
(Recalled in Rebuttal)
Direct 1927
Cross 1938

A. D. Osborne:
(In Rebuttal)
Direct 1674
Cross 1679

Henry Ehrlich:
(In Rebuttal)
Direct 1680
Cross 1682

J. D. Carpenter, Jr.:
(In Rebuttal)
Direct 1683

John Herben:
(In Rebuttal)
Direct 1688
Cross 1692
Re-direct 1704

Henry Steinfatt:
(In Rebuttal)
Direct 1705
Cross 1708
Re-direct 1711
Re-cross 1712

PAGE

F. A. Chrisler:
(In Rebuttal)
Direct 1713
Cross 1719
Re-direct 1725

William C. Osborne:
Direct 1014
Cross 1015
Re-direct 1020

R. R. Bogart:
(In Rebuttal)
Direct 1726
Cross 1729

Louis Sayer:
(In Rebuttal)
Direct 1733
Cross 1734

Howard P. Fort:
(In Rebuttal)
Direct 1740
Cross 1743
Re-direct 1746

H. Erickson:
(In Rebuttal)
Direct 1747
Cross 1749
Re-direct 1750

Albert F. Schmidt:
(In Rebuttal)
Direct 1751
Cross 1752
(Recalled)
Direct 1760
Cross 1761

Index.

PAGE

David Stark:
(In Rebuttal)
Direct 1754

T. F. Quinn:
(In Rebuttal)
Direct 1756
Cross 1758
Re-direct 1760

Frank C. Weitzman:
(In Rebuttal)
Direct 1763

J. A. McHale:
(In Rebuttal)
Direct 1767
Cross 1774
Re-direct 1784
Re-cross 1785
(Recalled in Rebuttal)
Direct 1940

M. C. Dingle:
(In Rebuttal)
Direct 1790
Cross 1799
Re-direct 1814
(Recalled)
Re-direct 1817
Re-cross 1818
Re-re-direct 1819

Filipo Durte:
(Recalled in Rebuttal)
Direct 1815

John I. Hale:
(In Rebuttal)
Direct 1889
Cross 1893

PAGE

James H. Mathews:
(In Rebuttal)
Direct 1910
Cross 1915

Howard Kellog:
(In Rebuttal)
Direct 1915
Cross 1917

H. J. Aldrich:
Direct 2255
Cross 2279
Re-direct 2288

H. J. Aldrich (in the case of Padro Mitchell):
Direct 2291
Cross 2292

H. J. Aldrich (in the case of Bernard Lang):
Direct 2295
Cross 2298
Re-direct 2302

Wilfred De Bethan (in the Hamilton case):
Direct 2303
Cross 2304

James Trotter:
Direct 2305
Cross 2311

Deposition of William Ice:
Direct 2314
Cross 2321

PAGE

Deposition of Harry A. Gold:
Direct 2323
Cross 2330
Re-direct 2338
Re-cross 2339

CLAIMANTS' WITNESSES:

James H. Scarr:
Direct 797

Charles Toner:
Direct 817
Cross 823

Henry Ehrlich:
Direct 823
Cross 825
Re-direct 828
Re-cross 830
(Recalled)
Re-direct 958
Re-cross 959

Cornelius H. Smith:
Direct 833
Cross 834

Monte Kearney:
Direct 834
Cross 844

Robert Oliver, Jr.:
Direct 849
Cross 857
(Recalled)
Direct 1387

PAGE

George T. Charlton:
Direct 862
Cross 882
Re-direct 884
(Recalled)
Re-cross 1011
Re-re-direct 1012

Willis S. Hill:
Direct 886
Cross 900
Re-direct 904
Re-cross 905
Re-re-direct 907
(Recalled)
Direct 1076
Cross 1083

Albert E. Potter:
Direct 908
Cross 912

Samuel Quinn:
Direct 915

Calvin I. Crocker:
Direct 921
Cross 923
Re-direct 926
Re-cross 930

Charles F. Kratovil:
Direct 931
Cross 940
Re-direct 944

PAGE

Thomas E. Horn:
Direct 945
Cross 950
Re-direct 955
Re-cross 957

Peter Mitchell:
Direct 962
Cross 975
Re-direct 976

Julius Johnson:
Direct 976
Cross 988
(Recalled)
Direct 1551
Cross 1554
Re-direct 1560
Re-cross 1562

Clifford R. Medlicot:
Direct 989
Cross 999
Re-direct 1005
Re-cross 1010

Thomas J. Lennon:
Direct 1023
Cross 1025

Michael J. O'Toole:
Direct 1026
Cross 1027

George D. Gray:
Direct 1030
Cross 1032
Re-direct 1034

PAGE

John J. Ryan:
Direct 1035
Cross 1046

John G. Beyer:
Direct 1047
(Recalled)
Cross 1068
Re-direct 1068

Robert Nevin:
Direct 1049

James E. Donnelly:
Direct 1053
Cross 1060

Peter Clark:
Direct 1063
Cross 1064

Dennis B. Sullivan:
Direct 1065
Cross 1067
Re-direct 1067

Russell F. Peterson:
Direct 1069
Cross 1075

Daniel Barker:
Direct 1090
Cross 1096
Re-direct 1101
Re-cross 1102
Re-re-direct 1103

Kenneth L. Norgrove:
Direct 1106
Cross 1111

PAGE

Joseph S. Pray:
Direct 1112
Cross 1115
Re-direct 1120

George V. Cook:
Direct 1121

William Feiss:
Direct 1125
Cross 1129
Re-direct 1132

William A. Tappen:
Direct 1135

Aaron Cooper:
Direct 1137
Cross 1149
Re-direct 1155

Patrick Gould:
Direct 1156
Cross 1161

John Dressler:
Direct 1161
(Recalled)
Direct 1172
Cross 1174
Re-direct 1178
Re-cross 1183

John J. Ryan:
Direct 1171

Dominico Darco:
Direct 1189

PAGE

Arthur Klaure:
Direct 1192
Cross 1199
Re-direct 1207
Re-cross 1211

Paul Boots:
Direct 1212
Cross 1223

Dominick D'Arco:
Direct 1224
Cross 1232
Re-direct 1235
(Recalled)
Direct 1670
Cross 1671

Frank Sosnicki:
Direct 1236

Patrick Flynn:
Direct 1237
Cross 1239

George F. Pollard:
Direct 1241
Cross 1245

Anthony F. Scaruzzo:
Direct 1246
Cross 1254

George G. Garber:
Direct 1259
Cross 1263
Re-direct 1264

John F. Amter:
Direct 1266
Cross 1268

PAGE

Frederick Ludwig:
Direct 1272
Cross 1282
Re-direct 1285

Caesar Caracas:
Direct 1286
Cross 1292
Re-direct 1293

Hipolito Riquelme:
Direct 1295
Cross 1299

Frank Charles:
Direct 1302
Cross 1306

Lena Burns:
Direct 1307

Sylvester O'Donnel:
Direct 1309
Cross 1312

Asa D. Gritman:
Direct 1313
Cross 1318
Re-direct 1320

Anna Eberle:
Direct 1324

Adolph Paer:
Direct 1326
Cross 1327

Bernard Lang:
Direct 1329
Cross 1338
Re-direct 1340

PAGE

Alfred C. Smith:
Direct 1341
Cross 1343

John Sullivan:
Direct 1345
Cross 1354
Re-direct 1360

Francis Mulhearn:
Direct 1365
Cross 1369

John F. Winters:
Direct 1370

William Ward:
Direct 1372

James Trotter:
Direct 1375
Cross 1383
Re-direct 1384
(Recalled)
Direct 1597
Cross 1598

Laura Rawlins:
Direct 1385

August Rietzke:
Direct 1388
Cross 1398

Helen Roberts:
Direct 1412

Sadi Varouxaki:
Direct 1413

Garland McEachin:
Direct 1415

PAGE

Amie Sims:
Direct 1417
Cross 1418

Peter Sullivan:
Direct 1418
Cross 1429
Re-direct 1431

William N. Noble:
Direct 1432
Cross 1435
Re-direct 1436
Re-cross 1437
Re-re-direct 1439
Re-re-cross 1441

Le Roy A. Block:
Direct 1442
Cross 1462
Re-direct 1473

Dennis V. Mahoney:
Direct 1475

Marie Marques:
Direct 1478

John J. Brown:
Direct 1479
Preliminary Cross 1486
Direct 1487
Cross 1487
Re-direct 1500

Eva Labiak:
Direct 1501
Cross 1502

Index.

PAGE

Nicholas J. Brazell:
Direct 1507
Cross 1525
Re-direct 1541
Re-cross 1545
Re-re-direct 1548
Re-re-cross 1549

Marian B. Thigpen:
Direct 1563

Terrence J. Mullen:
Direct 1566

Josephine Moralis:
Direct 1571

Deposition of Robert Height:
Direct 1577

Julius Martin:
Direct 1581
Cross 1584
Re-direct 1589
Re-cross 1591
(Recalled)
Direct 1665

Sarah Southwick:
Direct 1593

Nellie Wagner:
Direct 1596
Cross 1597

Edith Samuels:
Direct 1599
Cross 1600

PAGE

Anna Leibold:
Direct 1600
Cross 1602

Nellie Coyle:
Direct 1602
Cross 1604

Norman J. Brown:
Direct 1622
Cross 1625
Re-direct 1625

Deposition of Fred Charles Lang:
Direct 1629
Cross 1647
Re-direct 1651
Re-cross 1656

Virginia Sumner:
Direct 1659
Cross 1660

Leola Turner:
Direct 1661

Anna Murphy:
Direct 1663

Filipo Durte:
Direct 1665
Cross 1667

Herbert Simpson:
Direct 1672
Cross 1673

TESTIMONY BEFORE COMMISSIONER:

PETITIONER'S WITNESS:

PAGE

William R. Taylor:
Direct 2027
Cross 2030

CLAIMANTS' WITNESSES:

Adina Pusey:
Direct 2016
Cross 2019

Angelina Corriette:
Direct 2019

Mario Ortiz:
Direct 2022

Laura F. Rawlins:
Direct 2025

Nellie Coyle:
Direct 2033

Leola Turner:
Direct 2034

Lena Burns:
Direct 2035
Cross 2037

Marie Marques:
Direct 2037

Index.

PAGE

Darnelly Barker:
Direct 2039
Cross 2040

Kenneth Norgrove:
Direct 2045
Cross 2047

Anna Eberle:
Direct 2048

Julie Daniel:
Direct 2051
Cross 2053

Edith Samuels:
Direct 2057

Margarita G. De Meza:
Direct 2058

Ricardo Zamudio:
Direct 2060

Josephine Morales:
Direct 2063

Vera Alexander:
Direct 2065

Virginia Sumner:
Direct 2066

Celestine Mathais:
Direct 2069
Cross 2071

Emerance Hamilton:
Direct 2071

Michael W. McGloin:
Direct 2073

PAGE

Anna Belle Wisdom:
Direct 2074

Harry Nelson:
Direct 2076
Cross 2079

Stephen Nemitz:
Direct 2086

Bernard Lang:
Direct 2087

Dominick Darco:
Direct 2090

Junius Johnson:
Direct 2093

Helen Roberts:
Direct 2095
Cross 2098
Re-direct 2099
Re-cross 2099

Louis Ortiz:
Direct 2099

Nora McEachim:
Direct 2105
Cross 2108

Marion Thigpen:
Direct 2111

Annie May Jones:
Direct 2117

Julius Martin:
Direct 2118

Eva Labiak:
Direct 2118

PAGE

Raymond Boyer:
Direct 2122

Mary Martin:
Direct 2123

Junius Johnson called on behalf of Mary Martin:
Direct 2124

Felipe Durate:
Direct 2125
Cross 2129

Jose Rayas:
Direct 2130

Emma G. Navas:
Direct 2131

Maria Gaitan:
Direct 2133
Cross 2134

May Amlaw:
Direct 2136

Annie Murphy:
Direct 2138
Cross 2141

Carl Bremer:
Direct 2143
Cross 2148

Catherine Connolly:
Direct 2158
Cross 2162

Margaret Buttice:
Direct 2163
Cross 2164

PAGE

James Keys:
Direct 2164

Frederick Ludwig:
Direct 2166
Cross 2173
Re-direct 2180

Pedro Mitchell:
Direct 2181
Cross 2184
Re-direct 2186
Re-cross 2188

Geneva Sims:
Direct 2190

Amy Sims called on behalf of Geneva Sims:
Direct 2202
Cross 2206
Re-direct 2209

Aaron Cooper:
Direct 2211

John J. Sullivan:
Direct 2212
Cross 2219

John Kakos:
Direct 2226
Cross 2232
Re-direct 2237

Hilda Hicks:
Direct 2238
Cross 2242

PAGE

Elizabeth Hicks called on behalf of Hilda Hicks:
Direct 2245

Robert L. Proven:
Direct 2246
Cross 2250
Re-direct 2254

CLAIMANTS' EXHIBITS:

E—Weather Report, dated December, 1926, marked in evidence at folio 1530..... 2341

F—Weather Report, dated November, 1926, marked in evidence at folio 1534..... 2342

H—Receipt for Beaching Motor Boat, marked in evidence at folio 2218..... 2343

N—Advertisement of Spencer Kellogg & Sons, marked in evidence at folio 2265..... 2343

JJJ—Statement of Fred. Charles Lang employed as night operator of the Motor Launch "Linseed King", marked in evidence at folio 2344

MMM—Statement of Martin Dingle, dated December 22, 1926, marked in evidence at folio 5420..... 2346

NNN—Statement of Martin Dingle, dated February 1st, 1927, marked in evidence at folio 5441..... 2347

PAGE

QQQ—List of 44 names, marked in evidence at folio 5766.....2351

TTT—Supplementary Complaint Report, dated Dec. 30, 1926, List of bodies removed to Morgue, marked in evidence at folio 5845.....2352

PETITIONER'S REFERENCE EXHIBITS:

2—Abstracts of payroll, dated Aug. 9th, 1926, marked in evidence at folio 6797..2359

3—Abstract of payroll of men listed as Saturday men, dated Dec. 17, 1926, marked in evidence at folio 6799.....2361

A—(Sullivan Case) Time Card, marked in evidence at folio 6664.....2361

Proceedings in United States circuit court of appeals, second circuit 2365
Opinion, Hand, J 2365
Decree 2377
Clerk's certificate.....(omitted in printing)..
Orders allowing certiorari..... 2377

AARON COOPER, called as a witness on behalf of the claimants, being duly sworn, testified as follows: 3409

Direct examination by Mr. Axtell:

Q. Mr. Cooper, how old are you? A. 31.

Q. How tall are you? A. 5 foot 7, 8, something in there.

Q. How much do you weigh? A. 150.

Q. 150? A. Yes, sir.

Q. Were you on the "Linseed King" when she went down? A. Yes, sir.

Q. Were you employed, did you have a position, or were you working for them? A. They hired me 3410 Saturday, on the 18th.

Q. For what kind of work? A. Laborer.

Q. What? A. Laborer.

Q. Were you to work unloading a boat? A. Yes, sir.

Q. That is longshoreman's work? A. Yes, sir, longshore work.

Q. At how much an hour? A. 48 cents.

Q. Had you ever been over on the boat before? A. Yes, a few times.

Q. Had you ever worked there before? A. Yes, once; I worked at nights.

Q. How long before? A. One night and a half. 3411

Q. A couple of nights before? A. No; in June the same year.

Q. In June? A. Yes, sir.

Q. Had you worked there in December before this accident? A. No.

Q. You had not? A. No.

Q. This was your first trip except you say you had been over there Saturday? A. Saturday, yes.

Q. To see about the job? A. Yes, and Sunday.

Q. And Sunday? A. Yes.

3412 Q. Then you had crossed, or did you cross the river on Saturday and Sunday in the boat? A. Saturday and Sunday I did.

Q. You went over in the boat on those two days? A. I went over on the boat on those two days.

Q. Did you see any ice in the river on the day of the accident? A. Yes, sir.

Q. At what—— A. I saw plenty of it.

Q. Did you see any ice on the days before this? A. Saturday?

Q. You saw some on Saturday? A. Yes.

Q. Did you see any on Sunday? A. A little.

3413 Q. A little? A. Yes.

Q. Where was it, on which side of the river? A. On the New York side.

Q. On the New York side? A. Yes, sir.

Q. Did you see any on the Jersey side? A. I do not remember.

Q. You do not remember seeing any on the Jersey side? A. No, I do not remember.

Q. When was the first time you actually hit any ice in that boat? A. Well, after we left the dock, about 200 feet away from the dock, we struck a piece of ice.

Q. Do you know which side of the boat it struck
3414 on? A. On the left hand side, I think, yes, on the left side.

Q. Do you know how far out in the river you were when the boat was full of water? A. We was pretty near in the middle of the river.

Q. You were not quite in the middle of the river? A. I think we was just about.

Q. Tell the Court what happened. A. Well, when she hit the first time the captain, he kind of slowed up a little; so he started again, and in about a minute or two minutes after that we hit

a solid piece of ice again. Then somebody said, 3415
"This boat is leaking". So the captain said, "No, the boat is not leaking". I kind of realized it was leaking too, but I tried to forget about it.

Q. How far back were you in the boat? A. About 6 to 8 feet.

Q. Were you in front of the engine? A. Yes, sir.

Q. How far ahead of the engine? A. I was standing beside the engine, right alongside of the engine's position.

Q. You were, you say, back by the engine? A. I was back alongside the engine.

Q. And how far from the front of the boat? 3416
A. About 6 feet away from the front entrance.

Q. It was more than 6 feet from the front door to the engine, wasn't it? A. Well, about 6; maybe 10 feet or more.

Q. Which were you closest to, the engine or the front door? A. I was closest to the engine.

Q. How far did you say you were from the engine? A. I was standing up over the engine.

Q. You mean on it? A. Beside it, yes sir. I was standing there beside the engine.

Q. Beside it? A. Yes, sir.

Q. Which side of it? A. On the left side. 3417

Q. That is when you looked toward the front of the boat? A. Yes, sir.

Q. You mean you were right beside the engine? A. I was right beside the engine, yes, sir.

Q. I thought there was not any room for anybody to stand in there. A. Well, the space between the seats and the engine, there was some space; it is pretty narrow in there, but a person could stand in there.

3418 Q. Was not anybody sitting down in there by the engine? A. No, nobody could sit on that; there was on the seats.

Q. I mean on the seats beside the engine? A. Yes; they were sitting there.

Q. There were men sitting there? A. Yes; the seats were full.

Q. You were standing in front of those men? A. Yes, sir.

Q. Right in front of those men, between the men and the engine? A. That is it.

Q. Did you stand on their feet? A. No, not on
3419 their feet, but pretty well jammed up close to them.

Q. Were there any life preservers on that boat? A. Yes, sir, there were life preservers.

Q. Where? A. Overhead.

Q. Did you get one of them out? A. No, I didn't have time; I couldn't if I wanted to.

Q. Why not? A. It was too tight in there; we were jammed in there too close.

Q. What happened when the boat began to fill with water? A. Everybody made a yell and started to rush one way or the other. I started to go to the front. Finally, when I got pretty
3420 near the front the captain said, "Boys, the boat is sinking," and by that time I was sort of easing up by the door.

Q. You were still in the cabin? A. Yes, sir. I tried to forget about it, because I knew she was overloaded, and I figured it would be terrible with all those men in her if she sank, and I was trying to get to the door.

Q. You were trying to be calm? A. Yes.

Q. And not thinking about this terrible accident? A. Yes, sir.

Q. What next did you do? A. I heard a bunch 3421
of them yell, and try to get out, and could not move, but we were trying to move.

Q. Did anybody get out? A. Only one man I saw was the captain, when he leaped through the window. By that time the water hit me back of the neck, I remember.

Q. You remember the water hitting you back of the neck? A. And then I submerged under the water.

Q. Tell the Court what you did under water. A. I tried to move, and I was jammed up tight and could not move.

3422

Q. People were in there jammed in tight? A. Yes, sir. I was under the water, and we were all packed in there. I was on my back on the left hand side, and the boat turned over, and that left me on the bottom.

Q. When the boat rolled over you were on top? A. No, sir, I was on the bottom. The boat turned over first, leaving me there on the bottom. I held my breath until I started to jump inside, shaking all over.

Q. You held your breath as long as you could? A. Until I was shaking all over. I held my breath so long that I was shaking all over. 3423

Q. Are you a good swimmer? A. Pretty fair.

Q. Always have been? A. I have always been a pretty fair swimmer.

Q. Where were you born? A. Florida.

Q. You have been swimming down there? A. Yes, sir.

Q. With the alligators? A. No, not with the alligators.

Q. Did you ever do any underneath diving? A. Yes, sir.

3424 Q. Fetching up, as they call it? A. Yes, sir; I always was fond of diving.

Q. Go ahead; tell us how long you were there. A. I stayed down until I could not hold my breath any longer, and I started to breathe in slowly the water; I knew I was going to die.

Q. You knew you were going to die? A. Yes, because I started to breathe under water slowly.

Q. You were breathing in water? A. Yes, just slowly.

Q. Starting to take water into your lungs? A. Yes, sir. Then the boat came up, and I just had
3425 time to grab for my life.

Q. How did you get out of there, do you know? A. Yes; after the boat turned over——

Q. You swum out? A. I pulled myself out. You could not swim in there; there were too many people in there.

Q. Was anybody hanging on to you? A. Fellows were grabbing me, yes, sir.

Q. Were you grabbing others? A. No, I was trying to pull up overhead to the top of the boat.

Q. What did you do then, swim out from underneath? A. No, I pulled up on the steps leading outside. When the boat turned over on the side
3426 I was laying on the steps on my back, and when I was just about to breathe my last breath she straightened up, and I breathed out the water, and pulled myself up on the deck of the boat.

Q. Which did you get out, the front or the back? A. The front.

Q. Which side, the door on which side? A. The door on the left hand side.

Q. What did you see when you got out there? A. I pulled myself out on the top, and I was just the same as a drunken man. I tried to get over

to the other side where it was higher, and then 3427
I looked out and over there about 40 or 50 feet
away from the boat, I seen a fellow standing on
a piece of ice. That is him right over there.
(Indicating.)

Q. That man? A. Yes, sir.

Q. Mr. Sullivan? A. Yes, sir. He was standing there with his hands in his pocket, looking just as comfortable as he could be. And I said to myself, "I wish I was over there." So about that time I jumped overboard, I was afraid to stay on the boat, so I jumped overboard and started swimming over to a piece of ice; and after 3428
I left the boat about 15 or 20 feet, this fellow Lang I observed out in the water——

Q. Where is Lang? That man there? (Indicating.) A. Yes, sir. He asked me to save him. I said, "I cannot save you." He said, "Save me." I said, "I cannot; I am almost all in. I am fortunate if I can save myself." He lunged at me again, and I said, "Don't hold me." I was altogether all in. I was getting heavier and heavier; my clothes were getting heavier all the time being filled with the water, and so I swum up to this piece of ice. When I got there I saw I had reached the ice, and the ice was 3429
higher than my head. So I looked back at the boat, and it was too far to swim back. So I reached up on the ice, and I slipped off and went down. I made about two or three attempts, and each time I went down. So the next time I tried to stay up, I put my sleeve up on the ice, and let it stay there for a while, it was wet and it was freezing, and then I pulled myself up slowly and gradual like.

3430 Q. You let your coat sleeve freeze to the ice first? A. I let my coat sleeve freeze to the ice, and I pulled up slowly and gradually out of the water to that piece of ice.

Q. How far up out of the water did that ice come? A. It come way up; I had to reach up about that far (indicating), and I laid my sleeve up on the cake of ice and then pulled myself up gradually. I was about three minutes trying to get up on the ice after I stuck there, and I lay there for about 15 minutes until I could get my wind right. Then I stood up on the ice, and
3431 started working my hands. My clothes were covered with icicles, and my head was covered with ice, everything about me was covered with ice.

Q. How long were you out there? A. I looked both north, south, east and west, and did not see nothing. It was kind of dark. Pretty soon a boat came along and went up the river and did not stop. I yelled out to the boat, but they did not stop. And pretty soon the boat came back again; I think it was the same boat. So we started hollering again. About that time two men walked across the deck of the big boat.

Q. You saw them? A. Before that we did not
3432 see nobody on there. Then the big boat started to turn around, and you know how long it takes to turn around a big boat in the river.

Q. It took pretty long that morning, I bet you. A. Yes, it did. From the New York side then I seen a tugboat coming, and then I was overjoyed. But this tugboat came by us and passed us and went to the biggest crowd and started throwing life lines out to the men. And some could not grab the lines, and the tugboat could not get to where the men were because the

ice was too thick; and then this other boat, the 3433
big boat that turned around, came up on us, and that started the ice breaking, so we all pleaded for them to go back from us. Then she began to let her lifeboat down, and finally got the boat down in the water. By that time everybody was off the "Linseed King", and rescued on the tug or out on the ice. And they were trying to pick us up, and the lifeboat was filled, and this fellow, I do not know his name——

Q. The little fellow? A. No, the other fellow, I do not know his name, he was a white fellow, he was the last that was picked up upon the life- 3434
boat; he and another fellow was on a piece of ice that was out there, and the men handling the lifeboat said they could not take any more on the boat, or the boat would capsize, she was so full. They said they could not get those two fellows on, but I pleaded with them to take those two fellows, and they went on to the tugboat, to take us aboard the tugboat and pick those two fellows up; and we were aboard the tugboat about twenty minutes after that.

Q. What boat was that that you were on? A. It was a tugboat from the Jersey side.

Q. The Buffalo? A. No, it was another boat. 3435
Q. A Socony boat? A. I think that is it.

Q. Or a Cornell boat? A. I do not remember just what the boat was; I do not remember the name of it.

Q. How many were on the ice when you first remember seeing the men on the ice out there? A. When I first remember looking around there were about 45 or 50 men fortunate enough to escape the boat, and pretty near half of them did not last.

3436 Q. Pretty near half that escaped the boat slipped in the water afterwards? A. Yes, pretty near that many.

Q. Did you see any slip in the water? A. No, but I seen places where two or three or four men were standing on a piece of ice together, and I looked around again and I only seen one man where there was three before.

Q. You are sure that happened in some instances? A. Yes, sir.

Q. Did you see any of them tip over on the ice? A. Yes, many a time. I seen Lang, for instance,
3437 tip it over two or three times.

Q. What did you see him do? A. He was all excited, jumping from one piece to another. He thought maybe his piece was not as safe as another.

Q. What happened finally? A. Finally they found him. They thought he was dead, as his body was half in the water and half in the ice. They thought he was dead, but they picked him up.

Q. He was unconscious? A. Yes.

Q. And they got him ashore in time? A. Yes.

Q. Do you know how many men there were
3438 picked up that morning on the ice? A. No, only from the newspapers.

Q. Did you see any other wreckage around there where the boat was that the boat might have hit except ice? A. No, nothing but ice.

Q. You did not see any logs or spiles or beams or parts of ships? A. No, nothing but ice.

Q. Old buoys, or anything of that kind? A. No, sir.

Q. How high do you think that piece of ice came out of the water, the one you let your coat freeze

on? A. You know, some part of that ice was the same as a mountain while some was 5 and 6 inches thick, and maybe some only 4 inches thick. 3439

Q. You saw some piled up that came out of the water 5 or 6 feet? A. No, some came out of the water a foot, a foot out of the water.

Q. Show us with your hands about how high it came out of the water. A. About this high. (Indicating.)

Q. You are showing us about 12 to 14 inches? A. Yes, like a mountain.

Q. It was uneven, jagged? A. Yes, it was like a mountain.

Q. Do you think it was frozen together and frozen in lumps? Was that the way it appeared? A. Yes, ice as big as this court room, one square piece; and there was ice the size of this table here (indicating the dais in front of the Court). 3440

Q. The size of the table? A. Yes, sir.

The Court: As high as the table?

The Witness: No, the size of the table.

Q. How big was the piece of ice that you were on? A. That fellow and I was standing on a piece——

Q. Sullivan was on the same cake? A. Yes, on the same cake. He was standing about as far from me as he is now. (The person referred to was sitting in the back of the court room.) 3441

Q. Did you get up on that cake without any help? A. No, I didn't have any help.

Q. Had you ever ridden on that boat before this accident? A. Yes.

Q. Did you work there the year before? A. No, the same year.

Q. Was there any ice in the river before this

3442 day? A. Yes, on Saturday; that would be the 18th, there was ice.

Q. I believe you did testify about that already. How many people were on that boat, do you know? A. About 85 or 90, or maybe more; it was packed.

Q. Were there any people farther back to the stern than you were? A. As far as I could see, it was dark.

Q. You said you were near the engine? A. Yes, sir.

Q. Was it all jammed? Were the men all packed in? A. Yes, sir.

3443 Q. As far as you know, did anybody get out of the back end? A. Not as far as I know.

Q. Did anybody open any windows on the sides and climb out? A. Not as I could see. All I heard was one glass smash. I heard one glass smash after I pulled myself up.

Q. You do not know who did that? A. Yes, one fellow.

Q. Was that Samuel Michelin? A. No, he is not here in the court room.

Q. Did you see that man back there? A. Mitchell, yes.

Q. Is that he? A. No; we was in the same
3444 hospital together, in the Harlem Hospital.

Q. What was his name? A. Manhard, or something like that.

Q. Is he in the court room here? A. No, sir, he is not.

Q. How many people were on that boat that you knew? A. Mitchell is the only one I knew by sight.

Q. You have seen some men around the court room here that you knew; did you know they were on the boat? A. Yes, I seen them.

Q. Did you know them before you met them here in the court room? A. Yes, I met some of them in the hospital, and these other fellows, I met them on the ice; I knew them after I was on the ice. 3445

Q. Did they ever give you any instructions about life preservers, how to put on or get the life preservers, or use the windows to get out of the boat if anything happened? A. No, sir.

Q. They never did? A. No, sir.

Q. How much room did you have to turn around and get life preservers when the boat first started to get water in? A. We did not have any room. 3446

Q. You were packed in full, you say? A. Packed in full.

Mr. Axtell: That is all; your witness.

Cross examination by Mr. Englar:

Q. What sort of work had you done over at Spencer Kellogg? A. I worked on the cakes one night and a half, I think it was in June, the month of June, I am not sure, but it was that same year. I worked for thirteen hours straight. 3447

Q. What do you mean by working on the cakes? A. Down on the dock they have a cake pile where they stack cakes, and they call that the cake gang, that is all I know.

Q. You were employed as a laborer, is not that so? A. Yes, sir.

The Court: Had he been in June?

Q. Had you been before? A. Yes, sir.

3448 Q. You were employed just the same both times? A. I was signed up to come over there Saturday to unload the boat.

Q. What do you mean by "signed up to unload the boat"? A. I mean Saturday they signed us up, we would be the first ones to get the preference for the job when the seed boat comes in. That was arranged on Saturday, December 18th.

Q. Did they tell you just what sort of work you would have to do on Monday? A. Yes; they said when the seed boat came in we would work on the seed boat.

3449 Q. You were told to come back Monday and get a job? A. To come back Sunday.

Q. And get a job, but you were not told just what you would have to do? A. They was hiring men over there to work on a seed boat.

Q. Who hired you? A. Mr. Nelson, the timekeeper.

Q. And just what did he say to you? A. He just said, "State your name and address," and asked us, will we be sure to come back the next day if I take your name? I said, "Yes." So he takes all the names and says, "Be sure to come back Sunday."

3450 Q. That is all he said? A. That is all he said.

Q. And he took your name and address? A. And gave us a tag number, gave us a slip.

Q. Did they give you one of those? A. Yes, sir.

Q. You testified before the District Attorney, did you not? A. Yes, sir.

Q. Did you testify that they kept on saying, "Water is coming in the boat, so I looked down and I seen a little bit of water coming in, but I was in hopes that it would get across. About

three minutes after that the water was up to my ankles, so I tried to ease up to the door, and by that time the boat went right down, and the captain said, 'Boys, you are sinking;' that is about two minutes after that"? Did you testify to that? A. I do not remember testifying to that, looking down and seeing water. I heard the water rattling on the floor of the boat. 3451

Q. But you did not see it? A. No, I could not see it; it was dark in there.

Q. Was it about three minutes from the time that they told you water was coming in the boat until it got up to your ankles? A. No, it was around that anyway. 3452

Q. What? A. It was around that before we realized. They said the boat was sinking about three minutes before that, but after it hit a piece of ice it sank in less time than a minute and a half.

Q. Had not you hit anything when you first heard water was coming in the boat? A. Yes; she hit a bump.

Q. How far were you from the shore when you first heard the boat strike anything? A. We was gone about three or four minutes, I would say 100 or 200 feet from the shore, when we first hit something, and the Captain slowed down a while, and then started out again. 3453

Q. Then did you hit something else? A. Yes, sir.

Q. How many times did you hit things? A. Just twice.

Q. Twice? A. Yes, sir.

Q. Were they pretty close together or far apart? A. Well, say about a minute and a half apart; maybe two minutes apart.

3454 Q. After the first blow that you felt did you feel any water coming in, or hear any coming in? A. No.

Q. It was only after the second shock? A. After the first blow; it was before she hit the other that somebody said, "Water is coming in," that "Water is coming in the boat".

Q. Before she hit the second time? A. Yes, before she hit the second time they said water was coming in the boat, but I did not hear it.

Q. What? A. I did not hear it rattling on the floor.

3455 Q. But you heard somebody say water was coming in the boat? A. Yes, and the Captain said, "No, there is no water coming in," and the boat kept on going.

Q. You did not hear any water in the boat at that time? A. No, and then the boat took a list over on one side, and about the time she straightened up the boat hit again, and I heard rattling on the floor again. Then I realized water was coming in the boat, and by that time I was in the water up to my waist.

Q. Apparently from your testimony you say from the time the boat hit the second time until
3456 she sank was a couple of minutes? A. Well, I imagine something like that.

By the Court:

Q. As I understood you, you got out at the front part? A. The front part.

Q. And did you go down? A. I clumb up on the roof.

Q. And went down? A. Well, I take off my overcoat and jump overboard.

Q. I thought you said you went down? A. Yes, I was in the boat, I was in the boat when the boat sank; after she submerged I was in there, and when she turned over on the side I was still on the inside of the boat. 3457

By Mr. Englar:

Q. You said the boat slowed down after she hit the first time? A. Yes, a little bit; just for a second.

Q. Was not she running slowly before that? A. Well, she was about one-half; about half speed, I guess. 3458

Q. Just what did you come out through, one of the doors? A. Yes, the one on the left hand side, the same side that the boat turned over on. That is the side I came out of after she straightened up.

Q. She went over to one side and then came back again? A. Afterwards, but not right away. She stayed over on that side long enough to drown anybody.

Q. You say she went over to the left hand side? A. Yes, sir.

Q. And water came in the door? A. Yes, after she sunk, then she turned over on the side, and then I dived. 3459

Q. She never turned completely over, did she? A. On the side she turned.

Q. She turned over on one side and then came back and went straight down? A. She sank, she did not sink entirely, she stayed afloat.

Q. How high was the water when you went out through the door? A. How high was the water?

Q. Yes. A. She had sunk right up to the ceiling.

3460 Q. You mean you swam under water, and swam out through the door? A. No, I mean the boat sank. I was inside, and when she turned over on that side I was still inside, right on the steps, laying on my back drowning; and just by luck, when I was breathing my last breath, she straightened up and give me a chance to pull myself up and to get my head up over the deck of the boat, top of the boat.

Q. At that time when you say she returned back into place, how much of the door was above water? A. None of the door was above water.
3461 She sank down straight, but I came out of the hole through the cabin, through the little hatch; I pulled myself up on the top of the boat.

Q. I do not believe I quite understand what it was you went through to get out; was it one of the doors? A. One of the doors.

Q. Was that door completely under water at the time you got out? A. The door was completely under water, yes, sir. I come out by the door, and I come out by pulling myself to the top from the door. I did not come right out from the door and go over the side. I come out by pulling myself up and crawled to the top
3462 of the boat through a hatch, if you call that; I do not know the name of it.

Q. Did the boat strike any ice on Saturady or Sunday? A. No, not as I know of.

Q. You said something about ice on Saturday or Sunday. A. Yes.

Q. The boat did not hit any of it? A. No, not as I knows of; no, sir, I do not think she did.

Q. Where was this ice you saw Saturday or Sunday? A. On the New York side, and some around the piers, and a few pieces floating down the river, I think it was down.

Q. That was ice that was sort of banked in on the New York side? A. Well, in some spots it was 50 feet away from the dock. I stand on the dock and see a big sized piece of ice, about the size of this table, and that was right out in the river. 3463

Q. The boat did not run into any of it? A. No, sir.

Mr. Englar: That is all.

Re-direct examination by Mr. Axtell:

Q. Mr. Cooper, you used the expression two minutes and three minutes. I suppose you know how long one minute is? A. I think so, yes. 3464

Q. You have some idea of the space of time, how many seconds, and so forth? A. Yes, sir.

Q. Well, now, I want to test your knowledge on that and see what your idea of a minute is. We will not try three minutes, but just one minute. I will hold this watch in my hand, and you hold your hand up, and I want you to drop your hand at the end of the space of one minute, and when your hand comes down I will note the time on it.

(Witness holds up hand and then drops hand.) 3465

Mr. Axtell: That is just about ten seconds, is that right?

Mr. Englar: Just about.

Q. Now, it was three times that long between the two bumps? A. Yes, about three times that long.

Q. And if that was ten seconds, then it was-

3466 thirty seconds between the two bumps? A. Maybe.

Mr. Axtell: That is all.

(Witness excused.)

PATRICK GOULD, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

3467 Q. What do you do? A. Chauffeur.

Q. For whom? A. Thompson Trucking Company.

Q. Where do you live? A. 228 Palisade Avenue, Cliffside.

Q. Are you married or single? A. Married.

Q. How long have you been working for that company? A. The Thompson Trucking Company?

Q. Yes. A. Going on a year and a half.

Q. Did you ever work for Spencer Kellogg & Sons? A. Yes, sir.

3468 Q. How long did you work for Spencer Kellogg & Sons? A. Five years.

Q. When did you leave there? A. On December 12th.

Q. What year? A. 1926.

Q. You left when? A. December 12th.

Q. How long before the "Linseed King" was sunk? A. Oh, pretty nearly three weeks before the accident occurred to the "Linseed King".

Q. You do not remember exactly? A. No, sir, I do not.

Q. You said the 12th a minute ago that you left

there, and now you said three weeks before the accident occurred. Did you know when the accident was? A. I think it was on December 20th. 3469

Q. If it was the 12th that you left there, then it would be eight days before? A. Eight days before, yes.

Q. And if it was three weeks before, that would be around the end of November? A. Yes.

Q. You are not certain anyway? A. No, sir, I am not certain.

Q. All right; did you ever ride on the "Linseed King"? A. Yes, sir.

Q. How long before you left the company's employ? A. I was told by my superior, Mr. Balz, that the Captain, Mr. Dingle, was sick at the time. The foreman, Mr. Balz, came to me, and asked me did I know anything about operating a boat. I said, "Not anything," that I was not experienced about it, I knew something about engines. He said, "Go down to the boat and I will be down later on." I naturally done as I was told. I went down to the boat, and my foreman, Mr. Balz, come down there and said to me, "Wait a minute. I will be back in ten minutes." So in ten minutes he returned, and both of us took the boat across the river. 3470 3471

Q. You and Mr. Balz? A. Yes, sir.

Q. When was this? A. A week before the accident occurred.

Q. Was that after you had left the employ of the company? A. No, before that.

Q. You left the employ of the company on the 12th, that would be more than a week? A. Well, as far as the time is concerned, I am not positive about the time, to tell the truth.

3472 Q. How about Capt. Rohweder? Did you know anything about him? A. No, sir, I did not.

Q. At this time you are talking about was Capt. Rohweder there? A. No; that was in Mr. Dingle's time.

Q. That was long before the accident? A. Yes.

Q. Or was Dingle back there after he left in July? A. Not that know of; I could not say, to tell the truth.

Q. You are not certain of the date? A. No, sir.

Q. What was the condition of the boat at that
3473 time? A. Well, the condition of the boat, as much as I could see, the water pump was there and it leaked a little. So it was notified to the superintendent, Mr. Stover, and I believe Mr. Stover got in touch with the master mechanic and said the boat was to be fixed up. No doubt they sent a mechanic down there and got to work on it. And also my foreman, he worked upon it. So I believe they either welded it or fixed it up somehow or other, in order to stop the leak.

Q. Did you know what kind of a leak it was, whether it was caused by the packing or a crack? A. It might be the packing.

3474 Q. You do not know what it was? A. I do not know what it was, to tell the truth.

Q. Did you ever operate this boat alone? A. No, sir, I did not.

Q. Do you know anything about the condition of her steering gear? A. Yes.

Q. What can you tell us about that? A. I know that they took the boat from the south side to the north side of the dock and raised her up with chain, and Mr. Stover gave instructions to the master mechanic to have it fixed.

Q. Have what fixed? A. The rudder on the 3475
boat.

Q. How long before you left there was that? A. That was two or three weeks before I left there.

Q. Do you know whether it was fixed or not? A. It was not fixed at that moment, no, sir. Then we got orders to lower the boat into the river in order to bring over the three o'clock shift. Those were the instructions that were carried through at that time.

Q. Did you see the boat up there on the sling? A. Yes, absolutely; I was aboard the boat about 3476
that time.

Q. You say you were there four or five years? A. Yes, sir.

Q. Do you know whether they ever operated that boat in the winter time? A. Yes, sir.

Q. When there was ice in the river before this year? A. No, sir.

Q. You do not know? A. No, sir; she was not operated. Before the ice got near heavy in the river she was always pulled up.

Q. Was she operated on any other occasion when there was some ice in the river? A. Not to my knowledge, no, sir. 3477

Q. Do you know whether there was any ice in the river on the date of this accident? A. Yes, there was ice in the river on the day of the accident.

Q. How do you know that? A. From where I live; it is right up on top of the hill. I live at No. 2 Palisade Avenue, Cliffside, and it is a pretty steep mountain there, and you can see from the mountain right down into the river.

Q. Can you see up the river? A. Yes, you can see up as far as 96th Street.

3478 Q. Did you hear about the accident that day? A. Yes, I heard about the accident——

Q. Yes or no? A. Yes, sir.

Q. What time did you hear about it? A. 6:45.

Q. You heard about it as early as that in the morning? A. Yes, sir.

Q. How did you hear about it? A. As soon as I went to the works.

Q. Where were you working? A. Down at Kellogg's.

Q. I thought you left Kellogg's before this accident occurred. A. I did not practically leave;
3479 I was discharged, in other words, and I was told to come down in order to see Mr., the traffic manager from Buffalo, I have forgotten his name.

Q. You mean you were told to go down there on the day of the accident? A. No, no, a few days before that.

Q. I am talking about the day of the accident.

By the Court:

Q. You said you heard about it at half past six in the morning. A. Yes, sir, at a quarter to seven.

Q. Where were you? A. Down in front of
3480 their gate.

Q. How did you come to be at their gate at that hour and at that time? A. I was looking for a job.

Q. You were asked to come back and look for a job? A. No, I was not asked to go back there.

Q. But you had been previously discharged, and you went back to see if they would not take you on again? A. Yes, sir.

Q. That was it? A. Yes, sir.

Mr. Axtell: That is all; your witness.

Cross examination by Mr. Englar: 3481

Q. You never ran the boat by yourself, did you? A. No, sir.

Q. All you did was help Balz sometimes? A. Yes, sir.

Q. You mentioned a leak in the boat; that was fixed, was it not? A. Yes, sir, to my knowledge.

Q. And then you said there were orders given to fix the steering gear? A. Yes, sir.

Q. And you do not think that was done right away, but it was done eventually? A. It was pulled out on the other side and done afterwards 3482 by carpenters, yes, sir.

Mr. Englar: That is all.

(Witness excused.)

JOHN DRESSLER, called as a witness on behalf of the claimants, having been duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. What is your occupation? A. Electrician. 3483

Q. Where do you work? A. At the National Sugar Refining Company, Edgewater, New Jersey.

Q. How long have you been at that plant? A. I have been there about six months.

Q. Did you ever work for Spencer Kellogg & Sons? A. Yes, sir.

Q. When? A. In August, 1922, until July, 1927.

Q. You have been subpoenaed here in this case? A. Yes, sir.

3484 Q. And the first time you ever talked to me was right there in that chair? A. Yes, sir.

Q. Just two or three minutes ago? A. Yes, sir.

Q. What were your duties while working for Spencer Kellogg & Sons? A. I was an electrician.

Q. Did you have anything to do with the launch "Linseed King", yes or no? A. Yes, sir.

Q. What did you have to do with her? A. Substitute captain.

Q. During what period did you act as substitute captain? A. In the absence of the night or day captain.

3485 Q. For how long a period? A. From June, 1924, up until the time of the accident.

Q. That was more than two years, was it not? A. Yes, sir.

Q. Did you ever run her in the winter time, yes or no? A. No.

Q. What is that? A. No; that is, not during any ice. I run her in cold weather.

Q. You run her while there was some ice in the river? A. No, sir.

Q. You did not? A. No, sir.

Q. Do you remember when she was laid up in 3486 1925? A. I remember her being laid up; I do not remember the time.

Q. Well, Mr. Stover said January 5, 1925. A. I know it was pretty late.

Q. You had had ice in the river before January 5th, had you not? A. Yes, sir.

Q. Were you running her during that time? A. Well, it happened that neither man was absent. I only ran it in the absence of either man, in the case of sickness or leave of absence.

Q. Have you any means of telling us just the dates when you did run that boat? A. No, sir.

Q. You remember the accident? A. Yes, sir. 3487

Q. Were you working for them then? A. Yes, sir.

Q. Were you on duty that day? A. Yes, sir.

Q. What time did you go on duty on the 20th of December, that is Monday? A. Six o'clock.

Q. In the morning? A. Yes, sir.

Q. Were you there at six that morning? A. Yes, sir.

Q. Did you see the captain, Rohweder? A. Yes, sir.

Q. Do you know him? A. Yes, sir.

Q. You talked to him about this accident, did you? A. No, sir. 3488

Q. Did you drive the boat on Sunday, the day before the accident? A. No, I assisted.

Q. Whom did you assist? A. Fred Lang.

Q. Where is he? A. He is home.

Q. Is he sick? A. He was sick; I do not know whether he is sick now.

Q. What is his job there? A. Night electrician, he was.

Q. Did you cross the river on that boat on Sunday? A. Yes, sir.

Q. Who was in charge of the plant on Sunday? A. That I could not say, who was in 3489 charge.

Q. Who was usually in charge when Mr. Balz and Mr. Stover were not there? A. We had no foreman, as far as I know.

Q. Who was Johannis? A. Master mechanic.

Q. Was he in charge at times when neither Mr. Stover nor Mr. Balz was there? A. He was over the mechanical end; I do not know about the plant.

Q. The plant was not running on that Sunday, was it? A. No, sir.

3490 Q. She was shut down? A. Yes, sir.

Q. What time would you say the plant shut down on Saturday, the 18th? A. She shut down, she did not shut down Saturday, it was Sunday morning at 7 o'clock.

Q. She ran right straight through to Sunday morning? A. On the 19th at 7 o'clock.

Q. Were you on duty on Sunday? A. Yes, sir.

Q. What time did you go on? A. From 7 to 12.

Q. From 7 to 12 in the morning, or at night? A. In the morning.

3491 Q. Did you run the boat that day? A. Only as an assistant; assistant captain.

Q. Did you assist at any time to run that boat? A. I run it; I did not assist; I run it.

Q. I am taking your own words that you used. A. I assisted the captain once, you know, in tying and untying the boat from the dock.

Q. But you did not cross? A. I did, I certainly had to cross in order to tie it up on the other side.

Q. When was that? A. On Sunday morning. That is the only time I remember assisting the captain.

3492 Q. That is the only time? A. Yes, sir.

Q. And who was the captain then? A. Fred Lang.

Q. Is that the day before the accident? A. That was the day before the accident.

Q. Where was Capt. Rohweder that day? A. I do not know.

Q. Did you do any operating of that boat on Saturday? A. No, I did not.

Q. You did not? A. No, sir.

Q. Did you do any work on that boat on the

day before that, Friday? A. That I could not say. I had run it for two days; I do not know whether it was three days previous to the accident or ten days previous to the accident. It was around that time I had run it, but I could not say definitely. The captain was home, supposed to have a weak heart, or something. 3493

Q. Where did you live at that time? A. 1291 Newkirk Street.

Q. Is that in Cliffside? A. That is in North Bergen.

Q. How did you come down to the plant? A. By the Boulevard Road, and walked over from Nungesser's to the plant. 3494

Q. Did you ever in your life remember seeing ice in the Hudson River? A. Yes, sir.

Q. Where was it when you saw it? A. I seen it in the morning of the accident, after the accident.

Q. Was it pretty dark when you got to the plant at 6 o'clock? A. Yes, it was.

Q. You could not see across the river? A. I did not try.

Mr. Englar: He said seven o'clock; do you mean six? 3495

Q. Did you say six o'clock? A. Six o'clock, yes, sir.

Q. Six o'clock you got there? A. Yes, sir.

Q. I thought you started at seven o'clock? A. It was seven o'clock on Sunday and week days, and six o'clock on Mondays to start the plant.

Q. Was it any part of your duty to observe ice in the river? A. No, sir.

Q. Did they have anybody stationed there for that job? A. Not that I know of.

3496 Q. Was it dark on Sunday morning at 7 o'clock when you got down to the plant? A. Well, I would not say it was dark; it was pretty light, not full daylight, but it was not dark. Sort of——

Q. Sort of dawn? A. Yes, sir.

Q. Do you remember whether you could see the lights on the New York side or not? A. I could not say.

Q. Were the lights still lighted on the Drive? A. I could not say.

Q. When you went across on the launch on Sunday do you remember hitting any ice? A.
3497 I do not recall seeing any ice, but I did not look for it. I had been talking to the Captain, and my attention was not on the river at all, so I could not say whether there was or was not any ice.

Q. There might have been ice? A. There might have been ice and there might not have been.

Q. Do you remember an occasion when that boat was operating before when Floyd Clayton patched her bow for a cut made by ice? A. No, sir.

Q. You do not know anything about that? A. I do not know a thing about it.

3498 Q. Do you remember an occasion when she was laid up for damage incurred by ice when you were employed there——

Mr. Englar: Your Honor, I submit these questions are very leading.

Q. You have been interviewed by investigators for Spencer Kellogg & Sons, have you not? A. I have not been interviewed; I have been over to the office.

Q. The lawyer's office or the company's office? 3499
A. The lawyer's office.

Q. You have signed a statement, have you not? A. No, sir.

Q. You were questioned very carefully? A. I made a statement, but I did not sign it.

Q. You were questioned, were you not? A. Yes, sir, I was questioned.

Q. And they had a stenographer that took down what you said, did they not? A. Yes, sir.

Q. Were you asked whether you had ever seen ice in the Hudson River? A. I do not believe I was. I will correct myself. He asked me if I 3500
had seen any ice, and I told him I had seen ice the morning of the accident at a quarter after seven.

Q. Did you swear at that time that you had never seen any ice before that time? A. I did not swear; I did not sign anything.

Mr. Englar: I object; this is direct examination, and this is entirely improper.

The Court: As to this last question I sustain the objection.

Q. Were you told you would be a witness for 3501
Spencer Kellogg & Sons here in this case? A. No, sir.

Q. Were you not questioned about this hole in the boat that Floyd Clayton patched up?

Mr. Englar: I submit, your Honor, this is improper. My friend calls this witness. He is no longer with the company; he has not been for a long time, and he is examining him in a way which is only consistent with cross examination.

3502 The Court: Well, of course the rule is if counsel for any reason think the witness is unfriendly or hostile to their interest, they have a right to cross examine somewhat.

Mr. Englar: If he is cross examining on this issue, I would like to ask the witness a couple of questions.

Mr. Axtell: You will have your time in a few minutes. Wait a moment.

Mr. Englar: If he is going to cross examine the witness I want the privilege of
3503 asking some questions now.

The Court: We will see. Go ahead.

By Mr. Axtell:

Q. Mr. Dressler, were you told you would be subpoenaed by Spencer Kellogg & Sons Company in this case as a witness in this case after you had the interview? A. No, sir.

Q. Were you subpoenaed by them? A. No, sir.

Q. You were subpoenaed by somebody from my office? A. Yes.

Q. When? A. Friday night.

Q. Where? A. At the corner of 17th Street
3504 and Hudson Boulevard, West New York, New Jersey.

Q. Now, did you see any water in that boat at any time within two or three weeks before this accident occurred? A. We had to pump it out frequently.

Q. Did you ever notice whether this boat was lying with a load down by the head? A. I do not get what you mean.

Q. Did you ever run any motorboat besides this one? A. No, sir.

Q. You never had any other boat? A. No, sir, never; I never had any connection with any other boat whatsoever. 3505

Q. Do you know of an occasion when there was water in the boat, in that boat, when she was running? A. Yes, about the floor boards.

Q. How many occasions? A. I can remember one morning, and once coming down there and finding water up to the floor boards.

Q. How long before this accident? A. That I could not say; I have no idea. It was a short time before, but I could not give any definite time.

Q. Did you tell the lawyers anything about that when they called you down there? A. Yes, sir. 3506

Q. At the time they questioned you and they had a stenographer there to take it down? A. Yes, sir.

Q. And they put that down? A. I believe they did.

Mr. Axtell: I call for the production of that statement.

Mr. Englar: Your Honor, I protest against this.

The Court: Sustained. 3507

Mr. Englar: I protest against this entire line of examination. I think it is absolutely improper.

Mr. Axtell: Produce the statement and we will find out.

The Court: I cannot see anything improper about the examination, but I will sustain the last objection.

Mr. Axtell: Does counsel refuse to produce the statement?

3508 The Court: I will not require him to produce the statement.

Q. Would your recollection as to the date when that water was in the boat be refreshed by referring to any statement that you made at the office of Bigham, Englar & Jones? A. No, sir; I could give them no definite date.

Mr. Englar: Mr. Axtell, I am informed that this was the statement dictated, but never signed by the witness. If you want to inspect it, I am willing, but I will claim the right to offer it in evidence if you want
3509 to examine on it. You can examine it on those terms.

Q. Was this statement ever returned to you after you made it? A. No, sir, I do not know what is in the statement.

Mr. Englar: I offer it in evidence.

Mr. Jayne: I object to its being received in evidence.

Mr. Englar: I will ask the witness first to look at it to see if it is correct.

Mr. Axtell: It would not be admissible
3510 in any event.

The Court: Do we need to stop for that now?

Mr. Axtell: Let it be marked for identification.

Mr. Englar: But I want the witness to read it.

The Court: We will adjourn at five.

Mr. Englar: But I want the witness to read this first and say whether it is a correct statement.

Mr. Axtell: Could we not call the wit- 3511
ness back again after he reads it, tomor-
row? I would like to call a police officer,
Sergeant Ryan, to identify some records
and explain about some police records.

The Court: I do not think it is neces-
sary for him to take up the time of the
Court to read this now.

Mr. Englar: It will not take me three
minutes to finish the examination of this
witness.

Mr. Axtell: I would like to call Ser-
geant Ryan before we adjourn.

The Court: Suppose you call him now 3512
and give this witness an opportunity to
read it while you are examining Sergeant
Ryan?

Mr. Englar: If your Honor please, I
do not like to suspend just at this moment.

The Court: He can read this while the
police officer is being examined.

(Witness leaves stand and goes to side
of room.)

JOHN J. RYAN (Police Sergeant No. 691, 71st 3513
Precinct), called as a witness on behalf of the
claimants, having been duly sworn, testified as
follows:

Direct examination by Mr. Axtell:

Mr. Englar: Do not do that.

Mr. Jayne: Do you mean to insinuate
that——

The Court: That is not necessary.

3514 Mr. Englar: That is the reason I wanted him to remain on the stand.

Mr. Jayne: What do you mean by that?

The Court: That is all right; we do not want any argument here.

Q. Sergeant, what do you call that that you brought down here? A. I brought the Blotter down.

Q. Police Blotter? A. And the record, and the 27 aided card.

Q. Sergeant Ryan, there is nothing in that record except a telephone call about the accident, 3515 is that right? A. There is nothing pertaining to the accident.

Q. There is nothing that would identify the situation besides those records? A. The logbook, which I understand they were unable to locate.

Q. That is the logbook on the boat? A. The logbook on the boat.

Q. You do not know where that is? A. No, sir.

Mr. Axtell: That is all.

Mr. Englar: No cross examination.

(Witness excused.)

3516

JOHN DRESSLER, recalled as a witness, testified as follows:

The Court: I cannot see the purpose of having the witness read this statement. He says he did not sign it, does not know what it contained.

Mr. Englar: Your Honor, I not only concede, but I insist that this whole line of

examination was improper, and there was no point to it. But as long as Mr. Axtell has gone as far as he has, I claim the right to go the rest of the way. 3517

The Court: What do you want?

Mr. Englar: I want to show what statement he did make at our office, as long as there is as much in the record as there is about his having made a statement down there.

The Court: If you want to interrogate him on cross examination, go on.

Mr. Englar: Is that the statement——

Mr. Jayne: I would like to examine the witness. 3518

The Court: Make it brief, please.

Direct examination by Mr. Jayne:

Q. Did you ever notice anything about the way this boat steered? A. It steered very hard, and at times would get blocked on the rudder, would fall out some way, that is, the propelier would get in with the rudder; I do not know just how it happened, but it used to fall in there and break. That is, the propeller would stop us from steering the boat. 3519

Q. Did you notice that when this water was there, that she would steer with more difficulty than at other times? A. I do not believe she would; I never took particular notice.

Q. Do you say water actually run in her, and that this water was in her as high as the floor boards? A. Yes, sir.

Q. Do you know anything else about the boat that was wrong? A. Well, she used to get afire sometimes.

3520 Q. Where did she catch fire? A. I do not know what caused it, but a fire would come near what I call the carburetor; I am not sure what they call that part.

Q. How about the reverse gear, that threw her into reverse? Did you notice anything about that? A. It very seldom held.

Q. What do you mean by that? A. Well, when you threw it in it would slip; it was no use at all. If you threw it in and you wanted to run it in reverse it would not hold anything, it would slip.

Q. You told me those very things standing right
3521 there? A. Yes, sir.

Q. That is what you told me while I was standing there? A. Yes, sir.

The Court: There is no reflection on you whatever. You seem to think there was a reflection cast upon you, but nobody wishes to have any reflection placed upon you.

Mr. Jayne: There were some remarks that were made over here, and in view of your Honor's cutting me short, I wanted to make it clear on the record.

3522 The Court: You may cross examine him now.

Cross examination by Mr. Englar:

Q. Have you read this statement? A. Yes, sir.

Q. Is that the statement you made at our office? A. No, sir.

Q. It is not? A. Part of it is right, and part is not right.

Q. When were you last at my office? A. Excuse me—is there a third page on there? 3523

Q. Yes. A. I did not notice the third page; I have not read it. (Witness reads third page of papers handed him.)

Q. You say this statement is not correct? A. No, sir.

Mr. Englar: Well, I offer this. I ask that it be marked for identification in view of Mr. Axtell's extended examination about it. That is the statement that we have.

The Court: You can mark it for identification.

Mr. Englar: I want it marked for identification. 3524

(The same was marked Petitioner's Exhibit 15 for Identification of this date.)

Q. Have you been at my office since the day you came there to give a statement? A. No, sir.

Q. When was that? A. I cannot say; I do not remember the date.

Q. Was it shortly after the accident? A. Well, I believe it was about a month after the accident.

3525

Q. Then you were at my office, were you? A. Yes, sir.

Q. Have you been there since? A. No, sir.

Q. Has anyone from my office had any conversation with you since? A. No, sir.

Q. Since then you have left the employ of Spencer Kellogg & Sons, have you not? A. Yes, sir.

Q. As a matetr of fact, you were discharged there, were you not? A. No, sir, I quit.

3526 Q. Do you remember you left there— A. Oh, yes, I left there.

Q. Has anybody from their office talked to you about this thing since that time? A. No, sir.

Q. Now, you say there was something the matter with the clutch— A. Excuse me, the question before that, what was it?

(The last two questions and answers were repeated by the stenographer.)

The Witness: Pardon me; whose office do you mean?

3527 Q. Spencer Kellogg & Sons. A. No, sir.

Q. Has Mr. Medlicot talked to you? A. I talked with Mr. Medlicot but——

Q. How often? A. Once.

Q. Where? A. At Mr. Caracas's.

Q. At Mr. Caracas's store? A. Yes, sir.

Q. Over in Jersey? A. Yes, sir.

Q. Where was that? Can you tell us where that was? A. I believe it is McKinley Place and Anderson Avenue, but I am not sure.

Q. Did you say when you were at my office that the leaking of this boat was due to a cock con-
3528 nected with the bilge pump? A. I did not express it that way.

Q. What did you say? A. I said I believed the leaking came from men connecting a valve open, but I did not know for sure.

Q. And you reported the matter to Mr. Balz and he had it repaired? A. I reported it to him.

Q. Did you know that a different kind of valve was put on, a kind that had a wheel instead of a lever? A. There was quite a time in between the time I reported it and it was repaired, and

later on there was the overflow pipe, I believe it was, that had been leaking. So whether they repaired it at that time or not, or whether it was another time, I do not know. The next time that I made a trip on the boat there was a cock in there instead of a valve. 3529

Q. And that overboard discharge was repaired, was it? A. Yes, sir.

Q. It was cut out altogether? A. That I could not say.

Q. It did not leak any more? A. It did not leak any more.

Q. And a new clutch was put in? A. Yes, sir. 3530

Q. And that repaired that difficulty that you had with the reverse? A. No, she still had trouble with the reverse. We always had trouble with that; she would not hold in reverse, she would stick in high, that is ahead speed, and would not hold in reverse.

Q. When did you have this trouble, with the old clutch? A. And with the new clutch also.

Q. Even after the new clutch was put in there? A. I still had the trouble when I was on the boat, with the reverse, yes, sir.

Q. Do you know whether anybody else had trouble operating the boat? A. That I could not say. 3531

Q. You mean that the reverse did not work at all? A. At times she would hold and at other times she would not.

Q. That is, at times she would work and at other times she would not? A. Yes, sir.

Q. Did it better after the new clutch was put in than it did before? A. Somewhat, but not the way she should work.

3532 Q. Can you suggest anything more you could do for that than put in an entirely new clutch? A. Perhaps it was not adjusted right; it may have been possible to make a better adjustment. I do not know anything about that.

Q. All you knew is that you had trouble with the reverse? A. Yes, sir.

Q. Who else was at Caracas' store when you saw Mr. Medlicot there? A. The only ones I knew were Mr. Caracas, Mr. Medlicot, myself, and John Ampter.

Q. Was Mr. Myers there? A. No, sir.

3533 Q. Mr. Pelissier? A. Yes, sir.

Q. He was there? A. Yes, sir.

Q. Mr. DeGraff? A. I do not know Mr. DeGraff.

Q. Was Mr. Hines? A. I do not know him.

Q. Mr. Lang? A. I do not believe I know Lang.

Q. You know the man that ran the boat at night? A. Oh, Freddy Lang, you mean?

Q. Yes. A. No, he was not there.

Q. Was Mr. Axtell at any of these meetings? A. No, sir, I did not know Mr. Axtell, never seen him until I got in here today.

3534 Mr. Englar: That is all.

Re-direct examination by Mr. Axtell:

Q. How many men did you take on that boat when the seed boats were in? A. I counted 95 one day, and I must have missed some; I missed from 10 to 20; I cannot say for sure.

Q. You saw 90 on there? A. I counted 95.

Q. You counted 95? A. Yes, sir, I counted 95.

Q. Did you have any instructions how many

you were to carry on that boat, how many you were to take on? A. No, sir. 3535

Q. Who did you get orders from to run the boat? A. Mr. Strueli, the chief electrician.

Q. Where is he? A. Over at Spencer Kellogg & Sons' plant.

Q. You got no orders from anybody else? A. Either him, I would run it if Mr. McHale or Mr. Stover would tell me.

Q. Did you ever get any orders when to run or when not to run? A. Yes, sir.

Q. Mr. Streuli would give you those orders? A. Yes, sir; he told me when to run and I would run it for a day at a time. If on Monday morning the captain did not come up, I would run the boat. 3536

Q. How many different people were running this boat for the last four months that you know of before she went down? A. Arthur Clary, Fred Lang, Peter Sullivan, I believe Herbert Balz and myself.

Q. Aside from this one time you mentioned when you had 95 people on there, do you remember how many they carried at any other time when the seed boat was in? A. Not what others carried. I know I have carried better than 100 several times myself, judging from the crowd I counted the day I did count, and judging from the people that I carried on two or three different times; I know I must have carried over 100. 3537

Q. Was that in the summer time or cold weather? A. No, I believe that was a short while previous to the sinking of the "Linseed King". There was a seed ship that came in, and whenever a seed ship came in we employed more men.

3538 Q. You mean there was a vessel came in that you were unloading? A. Yes, sir.

Q. How long before that was it, before the accident? A. That I could not say.

Q. A couple of weeks? A. I have no idea. I believe it was about six or seven weeks.

Q. You do not know the name of the boat? A. No, sir; I do not even know there was a boat, but I believe it must have been a boat, because that was the only time we had a heavy crowd on board the "Linseed King".

Q. You carried those men on the deck or in
3539 the cabin? A. Some both ways.

Q. Was that going from New Jersey to New York, or were you going from New York to New Jersey, or both ways? A. Both ways.

Q. They were carried both ways that time? A. Yes, sir,

Q. Who was the superintendent on the dock at that time? A. Mr. McHale.

Q. That is the gentleman sitting over there in the court room? A. Yes, sir, that is he.

Q. He is right here next to Mr. Stover? A. Yes, sir.

Q. Did you ever say anything to Mr. Stover
3540 about the number you were carrying on the launch? A. No, sir, I did not mention it to Mr. Stover; I mentioned it to Mr. Streuli.

Q. He was your superior? A. He was my superior.

By the Court:

Q. What did you tell him about it? A. I told him what a crowd I had on board that morning.

By Mr. Axtell:

Q. Did you have anybody on board to help you load the boat? A. No, sir.

Q. Or to assist you in running the boat? A. No, sir.

Q. You ran it alone? A. Yes, sir.

Q. After you told him about how many you carried did he ever say to you anything about how many you should carry? A. I do not believe he did.

Q. He never gave you any instructions about how many you were to carry on the boat? A. No, sir, I do not believe that he did.

Q. Nobody ever gave you any instructions about that? A. No, sir, not as I recall.

Q. You were carrying as many as you could get on? A. I thought it was all right to carry as many as could get on.

Mr. Axtell: That is all.

By Mr. Jayne:

Q. I said the steering gear did not work just right; how did you mean? A. It was hard work to pull the wheel.

Q. What do you mean by it was hard work to pull the wheel? I wish you would explain that. A. It was not always hard to steer, but at times she steered hard.

By the Court:

Q. How was that? A. He asked me to tell you why she steered hard.

Q. Tell us again. A. She steered hard with the wheel.

3544 Q. What caused it to steer hard? A. I do not know; I believe it was in the pump.

Q. Was that harder steering than frequently occurs in that type of boat? Is it apt to occur on a boat of that type? A. That I do not know; I never navigated a boat before.

By Mr. Jayne:

Q. Did she have any trouble responding to the wheel when you turned the wheel? A. No, she responded to the wheel.

Q. She would respond to the wheel, would she?
3545 A. Oh, yes, she responded to the wheel.

Q. What was there about the rudder being doubled up, that you said? A. There was lags holding the rudder in place, and them lags would give way, and the rudder would fall; if the tide was going the wrong way it would run the rudder against the propeller, and we would have no way of steering them.

Q. Did that happen frequently? A. You know, it fell off, and once it came loose, once it fell off and once it came loose.

Q. It was hitting the propeller? A. One time
3546 the rudder fell off altogether.

Q. How did you get in that time? A. I had to turn in a circle and come up to leave the tide straighten my rudder up. I could pull my wheel one way, but not the other, so I came up against the tide and then worked in. I just made our dock, and tied to the end of the dock. I could steer one way, but could not steer the other way, the rudder was off that way.

The Court: Anything further?

Mr. Englar: Yes, sir. This is the wit-

ness, your Honor, that was supposed to be a hostile witness to my adversary. 3547

The Court: I notice neither side seems to be satisfied with him.

Re-cross examination by Mr. Englar:

Q. When was the last time you had trouble using the steering gear, the last time before the accident? How long before the accident? A. I believe it was, as I say, the day that I run it, it was either three or ten days previous, I am not sure which; something within two weeks previous.

Q. It might have been three weeks, could it not? A. I do not think so. 3548

Q. Did you know the steering gear was all rigged over again by Capt. Rohweder about that time? A. No, sir, I did not.

Q. Can you state definitely just when was the last time that you had any trouble with the steering gear? A. I could not say definitely, no.

Q. Could you state definitely when you had the last trouble with the rudder getting into the propeller? A. That was about three months previous.

Q. And that rudder was repaired, was it not? A. It was put back in the same place. 3549

Q. And as a matter of fact, were not there some alterations made in it? A. Not that I know of.

Q. Who did the work? Did you do it? A. No, sir, there was machinists on the job, machinists and riggers, I believe.

Q. Machinists and riggers, and after they got through you did not have any more trouble with that rudder, did you? A. Not for the time being.

Q. How many do you think is the most that you ever carried on this boat? A. Well, I believe

3550 the morning that I counted them was about the most; there was other trips that seemed close to it.

Q. And that morning you had how many? A. Well, I counted 95, and I do not know how many I missed; it could be anywhere from 10 to 20.

Q. And that was some time before; when was that with relation to the accident? A. Oh, I would say, I believe about six weeks previous to the accident, six or seven weeks, something like that; I could never set any definite time on it.

Q. Were they all in the cabin? A. No, sir. In the cabin, up on the deck, and up on my deck.

3551 Q. You mean up in the pilothouse? A. Up in the pilothouse.

Q. How many were out on deck? A. That I could not say.

Q. Can you give us any idea? A. I could not give you an idea, because I could just glance back and see I had men in the pilothouse, but I could not stop to count them. I had to pay attention to my wheel, and after I had docked, that is when I figured I missed a lot. I mean when I brought the launch into the dock, they would jump over the sides, and how many I missed in that way, I do not know.

3552 Q. As I understand your figure, you had about 95 in the cabin? A. No; I counted 95 that day, and there were some that were up on the deck, and some in the pilothouse, and as we landed, of course some jumped over the side, and whether they come from inside or the deck or where, I do not know, but I counted the most that I could as they got off.

The Court: There were 95 in the pilothouse?

The Witness: 95 in the cabin and pilot house that I counted. 3553

The Court: He means in the cabin when he says in the pilothouse?

Mr. Englar: Yes, sir.

The Witness: The pilothouse was raised from the cabin, and they had to come past the pilothouse to get out.

Q. How many do you think you had inside the cabin and the pilothouse? A. I would estimate 80 or 85.

Q. And you think you had some outside? A. Well, I had some up on my platform, and on the 3554
stairs, and I had some outside.

Q. Well, when I asked you how many you had inside the cabin and pilothouse, I mean everybody inside, whether on the stairs or up on your platform, or wherever they were. A. I would estimate from 90 to 100.

Q. So that you think you had from 90 to 100 inside the cabin and the pilothouse, is that right? A. I would estimate it at that, yes.

Q. You think it may have been 100? A. It may have been 100.

Q. You think you had some men outside on 3555
the deck? A. I did have some more out there.

Q. How many, do you think? A. I could not give you an answer as to that.

Q. Six, or eight, or ten? A. I could not give any answer, because I could only glance back and see that there were some there.

Q. Were those back on the rear deck of the boat? A. They were on the rear deck, and sometimes they would move up the sides, sometimes they would go back to the rear deck again. We

3556 had a stringpiece alongside the cabin, I should judge about a foot wide, where they could walk along and hold on to the hand rail, and some would want to move to the front, and others would want to go to the back.

Q. You say you think you had approximately 100 inside, and you do not know how many on the deck?

Mr. Jayne: I object to that; he said 90 to 100.

Mr. Englar: He said it may have been a hundred.

3557 Mr. Jayne: No, he said 90 to 100.

The Witness: I said 90 to 100.

Q. You said there may have been a hundred? A. I said it may have been 90, and may have been 100.

Q. In addition to those there were men moving on the side and standing on the rear deck? A. They would move up on the side; sometimes they would stand up on the side.

The Court: You mean in addition to the 90 or 100 inside?

3558 The Witness: Yes, sir, in addition to the men inside the cabin.

Q. Did you have some on the front deck as well as in front of the pilothouse? A. Yes; there were three or four of them sort of sitting down.

Q. On the deck in front of the pilothouse? A. In front of me.

Q. You may have had 110 or 115 all told on the boat? A. I would estimate it at 110 or 115.

By the Court:

3559

Q. When did you say this was? A. Well, I could not say a definite date; I said I believed it was about 6 or 7 weeks previous to the sinking of the boat.

Mr. Englar: That is all.

The Court: Are we through now?

Mr. Axtell: No, not quite.

By Mr. Axtell:

Q. Did you have any instructions at any time to count the number of men that went on? A. No, sir. 3560

Q. Did you know how many life preservers you had? A. No, sir.

Q. Did you ever instruct these men that you carried in this boat how to use the life preservers? A. No, sir.

Q. Did you know how the windows opened on this boat, that is, did you ever notice that? A. I believe I did notice how they opened.

Q. Did you know at that time? A. Yes, sir.

Q. Did you ever instruct these people how to open the windows in case of an accident? A. No, sir. 3561

Q. Did it ever occur to you that an accident might occur, that you might strike something? A. I was not so afraid of striking something as I was afraid of a fire.

Q. Did it ever occur to you that it might be necessary for those men to get out of there very quickly? A. Well, I never really thought of that.

Q. Did you ever know how many life preservers you carried? A. No, sir.

3562 Q. Nobody ever told you? A. No, sir.

Q. You never counted them? A. No, sir.

Q. You knew you had some? A. I knew I had some.

Q. Did you ever have any instructions from Mr. Stover, or Mr. Balz, or Mr. Johannis, or Mr. Streuli, that you were not to carry more men than you had life preservers for? A. No, sir, they never gave me any instructions in regard to carrying people.

Q. You never had any instructions about anything except to run the boat, is that all? A. That is all.

3563 The Court: We will adjourn now until 10:30 tomorrow morning.

Adjourned to Tuesday, January 24, 1928, at 10:30 A. M.

New York, January 24, 1928.

(Met pursuant to adjournment at 10:30 A. M.; present as before.)

3564 Mr. Axtell: This man does not speak English, your Honor. I have an interpreter, if there is no objection.

Mr. Englar: I should like an interpreter present to check this interpretation. I can get one in twenty minutes.

The Court: Does he speak English?

Mr. Axtell: A little.

(The Court directed that an attempt be made to examine the witness without an interpreter.)

DOMINICO DARCO, called as a witness on behalf of the claimants, being duly sworn, testified as 3565
follows:

Direct examination by Mr. Axtell:

Q. How old are you? A. 30 years.
Q. You were born in Italy? A. Yes, sir.
Q. How tall are you? A. I do not, I forget.
Q. You are not very tall. Did you ride on the "Linseed King"? A. Yes, sir.
Q. On December 20th? A. Yes, sir.
Q. You were on her? A. Yes, sir.
Q. When she went down? A. Yes, sir. 3566
Q. What part of the boat were you in? A. Up on the front.
Q. Were you in the cabin where the captain was? Is that what you mean by the pilothouse? A. Yes, sir.
Q. Did you look into the cabin at all where the men were packed? A. Yes.

The Court: Was he outside the front, or inside?

Mr. Axtell: I understood in the pilothouse.

The Witness: Inside. 3567

Q. How many men were there? A. I do not know; I do not make a count; 85 or more, I don't know.
Q. How many do you think they were there? A. About 100 or 90. I do not make a count. Stood all too close.
Q. Was this your first trip? A. Yes, sir, the first trip.

3568 The Court: We want to understand him, and he ought to be permitted to make himself understood.

Mr. Englar: I think the witness could get along all right if you take it slowly.

Mr. Axtell: The Court expresses a doubt about it.

The Court: I think the witness should have a right to make himself understood.

Mr. Englar: Do you feel he should have an interpreter, your Honor?

The Court: Yes, I do.

3569 (At this point Peter Carcaterre was sworn as interpreter.)

Mr. Axtell: I never saw this man before.

Q. (Addressed to the interpreter.) Was this your first ride on the "Linseed King"——

Mr. Englar: May I question the interpreter first?

The Court: Granted.

Mr. Englar (to the interpreter): Were you born in Italy?

The Interpreter: Yes, sir.

3570 Mr. Englar: How long have you been in this country?

The Interpreter: 14 years.

Mr. Englar: Have you ever acted as interpreter in courts before?

The Interpreter: No.

Mr. Englar: Where do you work?

The Interpreter: I have my own place in the Bronx.

Mr. Englar: What is your business?

The Interpreter: Barber.

Mr. Englar: Have you had any experience before as interpreter? 3571

The Interpreter: No.

Mr. Englar: I submit we ought to have an opportunity to have an experienced interpreter here to check this interpretation.

The Court (to the interpreter): Do you know any men who were aboard this boat on the morning this disaster occurred?

The Interpreter: I do not know anything about it.

The Court: Do you know any of the men on the boat who were drowned? 3572

The Interpreter: No.

The Court: Are you interested in any of the cases that have been brought by men who were injured, or by their next of kin, or relationship?

The Interpreter: No.

The Court: No relationship to anybody who brought a lawsuit against the boat or against the Spencer Kellogg?

The Interpreter: No.

Mr. Englar: How long have you known Darco?

The Interpreter: Ten years. 3573

The Witness: No, in 1920.

The Interpreter: About nine or ten years.

Mr. Axtell: Is this man's name Darco?

The Interpreter: Yes.

Mr. Axtell: I did not even know his name.

Mr. Englar: Do you live near him, or how well do you know him?

3574 The Interpreter: I know him well. He comes in my shop to get shaved.

Mr. Englar: You shave him in the shop?

The Interpreter: Yes.

Mr. Englar: I submit that is not the way to choose an interpreter. I am willing to have an interpreter if I have somebody here who can speak Italian.

Mr. Axtell: Haven't you a workman back here who speaks Italian? Here is a man who used to work for you, he is under our subpoena.

3575 Mr. Englar: I would like a disinterested person.

The Court: If you feel that way we will withdraw the witness.

Mr. Englar: I can have him here in half an hour.

The Court: All right. Stay in attendance, witness.

ARTHUR KLAHRE, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

3576 Direct examination by Mr. Axtell:

Q. Where do your work? A. United States Aluminum.

Q. What do you do there? A. Machinist.

Q. How long have you been with that company? A. One week.

Q. Where is their plant? A. Edgewater.

Q. How old are you? A. Forty.

Q. Married or single? A. Married.

Q. You live in Edgewater? A. No, I live in 3577
Ridgefield, New Jersey.

Q. Did you ever work for Spencer Kellogg? A. Yes, sir.

Q. When? A. Eight years.

Q. When did you begin and when did you leave there? A. 1922—1922.

Q. That is when you quit? A. When I started.

Q. In 1922? A. Yes, sir.

Q. How many years do you say you worked there? A. To about 1921.

Q. How long did you say you worked there? A. Let me see now. 3578

The Court: Eight years, he said.

Q. I thought you said eight years. A. Yes, sir.

By the Court:

Q. Have you worked for the Kelloggs for a period of eight years? A. They had me eight years there.

Q. They had you there eight years? A. Yes, sir. 3579

Q. You were working there eight years? A. Yes, sir.

Q. When did you stop working for them? A. 1926.

By Mr. Axtell:

Q. You left there in 1926? A. Yes, sir.

Q. Were you there on the day of the accident to the "Linseed King"? A. Yes, sir.

3580 Q. What was your job then? A. Machinist.

Q. Who did you work under? A. Hank Johannis.

Q. Did you ever run the motorboat "Linseed King"? A. Yes, sir, I did.

Q. How long before this accident was the last time you ran her? A. I have been running her right along the whole year of 1926 and part of 1925.

Q. What times of day did you run her, day time or night time? A. Night time.

Q. Was Dinkel running her part of that time?

3581 A. He was boat captain in the day time.

Q. You ran her nights? A. I ran her nights.

Q. How many trips a day did you run her? A. I made two trips at night.

Q. Carrying men? A. Carrying men; the first trip at 10:30 and the next would be 11:30.

Q. How long a period altogether did you run their boat across the river for them night times? A. A period of, as I say, in the year 1926 and part of 1925, but I had not been running her steady.

Q. You did not run her before 1925? A. No.

Q. You were working at the plant before that?

3582 A. I was workin gat the plant before that.

Q. Is it difficult for you to hear? I have a feeeling I have to talk very loud to make you understand. A. My hearing is a little bit hard.

Q. I wish you would talk up a little louder. A. It is on account of my teeth I cannot speak very good.

Q. Do you remember when the boat was laid up in 1925? A. In 1925?

Q. The year before this accident, do you re-

member, that is all I asked you? A. No, I don't remember. 3583

Q. Mr. Stover said she was laid up on January 5, 1925; is that consistent with your belief?

Mr. Englar: He says he doesn't remember.

A. I could not exactly tell. They generally tie her up in the daytime and I am not down there in the day time.

Q. Was there any ice in the river the year before, before she was laid up? 3584

Mr. Englar: He says he does not remember when it was tied up. Now he is being led to say she was tied up after there was ice.

The Court: He may answer.

A. It is hard to tell. It is laid up in the day time when I am not there.

Q. Do you hear the questions that are put to you, or don't you? A. I hear the questions.

Mr. Axtell: Read the question. 3585

(The stenographer repeated next to the last question.)

Mr. Englar: Now will you read the answer, Mr. Stenographer?

(The stenographer repeated the answer.)

The Witness: There was ice in the river.

Mr. Englar: Will you read the answer, please? He is changing the answer.

(The stenographer repeated the last two questions and answers.)

3586 Mr. Axtell: He did not hear the question. He seems to be on another hemisphere.

Q. Did you see ice in the river in 1925 while the boat was still running? A. In 1925 at night I did see some ice.

Q. On how many occasions did you run the boat across the river in 1925, when there was ice in the river? A. I ran it on occasions twice at night.

Q. Twice you remember? A. Yes, sir.

3587 Q. Did you make any report of that to anybody? A. Yes, sir, I made a report to Marty Dinkel, the boat captain.

Q. Did you make any report to anybody else? A. I made a report to Hank Johannis one time.

Q. Was Johannis over you in the same department? A. He was over me—well, he was not over me at night. He was only over me at days.

Q. Did you do other work than run the boat? A. I done other work.

Q. What other work? A. Machinist.

Q. Then this was just a side issue with you, running the boat, extra work? A. Extra work.

3588 Q. Did you have anything to do with the boat during the month before she went down in 1926? A. No, sir, I did not.

Q. Did you have any occasion to go near the boat or to see the boat before she went down, within a month? A. I had no occasion, no.

Q. Did you see the boat at any time within the month before she went down? A. I have not seen the boat at all. I have been in the machine shop. I have not seen the boat.

Q. How many people did you carry on the boat

when you were running her? A. I carried quite a full load; about anyhow—the side seats were filled and the standing room was all full. 3589

Q. How many standing up? A. All I could carry standing up, the whole boat was full.

Q. How many was that? A. Around 80 or 85 altogether.

Q. You say 80 or 85 fills her up? A. Fills her up as far as I have carried at night.

Q. Did you carry that many at any time when there was ice in the river? A. I carried it one time, and I discovered ice on the other side, and when I came back from the other side I went and made a report about that ice being on the other side. 3590

Q. Do you know whether at any time this boat's bow was broken in by ice, before the date she went down? A. No, sir.

Q. You do not? A. No, sir.

Q. Do you know of any repairs made to her bow, a new piece of plank put in, yes or no? A. No, I do not.

Q. Will you describe the condition of the "Linseed King" the last time you were aboard her? A. The "Linseed King" was in pretty bad shape. She had been leaking in the stuffing box, and another thing, they had a pan at the flywheel to prevent the water getting on the flywheel so it would not splash on the mag. 3591

Q. On the magneto? A. The magneto, and there was a time when the choker blew out and it caught fire and they had to use two extinguishers to put the fire out, and the time was when the steering apparatus broke.

Q. How much of the time was she leaking, that you know of? A. She was leaking pretty bad at

3592 certain times, and certain times she was not leaking bad, and the times she was leaking bad I had to use a 14 quart bucket to bail the water out.

Q. Bail it from where? A. The bottom of the boat.

Q. What part? A. Under the flooring.

Q. Aft or forward? A. Aft.

Q. Was there any pump there, bilge pump? A. There was a pump there.

Q. Was that connected with the engine? A. Yes, it was connected with the engine.

Q. Why didn't you use that? A. It was used, but it did not do any good.

3593 Q. Was there any place to bail it from the bow? A. Yes, there was a trap door in the back.

Q. I said from the bow. A. From the bow, no.

Q. Was there a place to bail from the bow? A. No.

Q. There was no opening in the floor you could go down in and bail water out? A. No.

Q. Was there a pump there? A. No pump. There was a pump on the dock, a steam pump.

Q. There was a steam pump on the dock? A. Yes, sir.

3594 Q. Did you see that in operation? A. Yes, sir.

Q. How recently was that steam pump on the dock in operation? A. Every time they came back on the trip.

Q. How recently before the accident? A. At the time when I was running at night, at the time it was used, I do not know about in the day, because I was not down there in the day.

Q. Do you know whether it was used from the time you were running her a month before the accident up to the accident, do you know that? A. Yes, I know that.

Q. You do know the steam pump was used? 3595
A. Yes, sir.

Q. That is what somebody called a siphon? A. A siphon.

Q. How much of the time was it used? A. After every trip, until they made the next trip.

Cross examination by Mr. Englar:

Q. When did you go to work for Spencer Kellogg? A. I was employed 8 years for them; I cannot exactly say. It was 8 years in 1926 when I got out of there.

Q. Then you must have gone there in 1918? 3596
A. It must have been. I believe it was 1918, part of 1918 and 1919 I was in Glucose, working there, and I came back.

Q. You are pretty sure you started in 1918? A. I am pretty sure. It is eight years anyhow. I have an eight-year service button.

Q. Did you at any time run this boat regularly at night? A. Not steady.

Q. Not at any time? A. At night, I ran it at night, but not steady.

Q. Who was the regular night man when you first went there? A. I was one, and then Freddy 3597
Lang was another night man who ran the boat.

Q. Did you run the boat at night except when Freddy Lang was not there, or off duty? A. He was on duty, and sometimes off duty, and I would run the boat.

Q. And you did so run the boat on occasions when Lang was off duty? A. Yes, sir, when Lang was off duty I ran the boat.

Q. Lang was the regular night man? A. He was through time, and then they put me on running the boat regularly, changed off.

3598 Q. During what period were you the regular night operator of this boat? A. The period—you mean what year?

Q. Yes. A. As I say, part of 1925 and part of 1926.

Q. During all that period you were the regular night operator? A. I was the operator, and then I had to do machinist's work besides.

Q. You ran the boat regularly for two trips every night? A. Two trips every night.

Q. From what time in 1925 to what time in 1926? A. Every time when there was a regular trip to be made.

3599 Q. I say, what time in 1925 did you start as a regular man to run the boat at night, and what time in 1926 did you stop that? A. What time I started, I could not exactly say.

The Court: He said on direct only part of 1925 and the entire year of 1926.

A. I was on her in 1925 and 1926.

Q. At what time in 1926 did you stop being the regular night operator? A. A month before the accident.

3600 Q. So that up until the latter part of November you were the regular night operator all through 1926? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. Did Freddy Lang run the boat at all at night then? A. He ran it sometimes at night too.

Q. But only when you were off duty? A. I was on duty quite often, I have not lost much time, but I got orders from Mr. Stover or Mr. McHale, either one should run the boat, so whenever Mr. Stover gave orders to Lang to run the

boat he ran the boat, and when he gave orders to me I ran the boat. 3601

Q. As I understand you, there was not a regular night operator, but a man was assigned each night to run the boat, is that it? A. Yes, sir.

Q. Now that is correct? A. Yes, sir.

Q. And during 1926 I am to understand that you were the one that ran it most of the nights? A. I ran it most of the nights.

Q. When Lang ran it at night it was the exception? A. Yes, sir.

Q. Am I to understand from your testimony you say on one occasion you ran this boat through ice? A. No, I did not run the boat through ice, but I ran the boat until it got to the New York side, and discovered the ice there. 3602

Q. You saw some ice? A. Yes, sir.

Q. But you did not run the boat through ice? A. I did not run it through ice. I came back again.

Q. When you saw the ice you came back? A. Yes.

Q. Because you knew you were not supposed to run it through ice, didn't you? A. Yes, sir.

Q. Now I understand your testimony to be that throughout the year 1926 there was a steam siphon on the dock which was used at the end of every trip the boat made at night A. Yes, sir. 3603

Q. And you swear to that? A. Yes, sir.

Q. You are just as positive of that as of everything else you said here? A. Yes, sir.

Q. No question about it? A. No.

Q. Who applied that siphon, did you put it on yourself? A. No.

Q. Who did? A. That I could not tell you. It was put on during the day.

3604 Q. What? A. It was put on during the day by someone.

Q. What do you mean by "put on"? A. It was put there during the day by somebody.

Q. Somebody under Mr. Johannis? A. Yes, sir; either under Mr. Johannis—I don't know.

Q. You mean it was put on the dock? A. Put on the dock in the day.

Q. And you found it there at night? A. Yes, sir.

Q. And you used it each night? A. Yes, sir.

Q. Because there was water in your boat and you could not get it out otherwise? A. I used to
3605 bail it out or use the siphon.

Q. You say that was due to a leak in the stuffing box? A. In the stuffing box, somewhere in the front of the boat, and they had a pan in front of the flywheel so the water would not get on the magneto.

Q. During part of the time you ran this boat at night was Capt. Rohweder running her in the daytime? A. Yes, sir, he was running her in the daytime.

Q. About how long did you run her at night while he was running her in the daytime? A.
3606 As I say, from 1925 to 1926, I was running her at night.

Q. I say, how long did you and Capt. Rohweder run the boat? A. Rohweder was running it in the daytime, I was running at night.

Q. How long? A. He was not running it long in the day, he was only a new hired captain.

Q. How long was it he was running it in the day and you were running it at night? A. I could not exactly say how long he was running it in the day.

Q. Would you say a month or a week or what? 3607
A. A month or so, as far as I understand, as far as I can get to it.

Q. Did you sign a time card showing what you did each day? A. No, sir.

Q. Did you make any record of what you worked at on a given day? A. They have me on record anyhow if I was working.

Q. They have what? A. They have me on record, what I was working on.

Q. Did you run the boat alone or did you have another man with you? A. I ran it alone.

Q. Always? A. Always until I made the re- 3608
mark about having another man.

Q. When was that? A. That was when the boat was very bad.

Q. About when was it, what year? A. 1926; p[illegible] of 1926.

About what time? A. That I could not exactly say, what time. That was around the trips the boat made.

Q. Was it in the early spring or summer? A. In the spring, probably.

Q. Early spring? A. Early spring.

Q. Did you get a man after that to run her with you? A. I got a man, but he was not on very 3609
long, and he was off again.

Q. Who was the man? A. His name was Brown from the dock, one of Joe McHale's assistants.

Q. You say he did not stay long. About how long? A. He was on about a week.

Q. And then after that you ran the boat alone again? A. Yes, sir.

Q. Didn't you sign a time card every day over at Spencer Kellogg's? A. I rung up my card

3610 every night I came in and every morning I went home.

Q. You are sure you did not sign a time card? A. No, I did not sign a time card.

Q. Did you make a report of what you did every day? A. I made a report to Hank Johannis, but they generally know what I did at night anyhow.

Q. Who was your superior there, who did you work under? A. One time I worked under Jim Caracas, and another time under Mr. McHale, and I guess that is all I worked under.

3611 Q. Who was in charge of the boat while you were running her? A. I got orders from Mr. Stover and Mr. McHale.

Q. Did you know a man there named Balz? A. I knew a man named Bolz.

Q. Balz? A. Yes, sir.

Q. Was he there at Spencer Kellogg when you were there? A. He was there, yes, sir.

Q. Did he have charge of the boat? A. That I could not say, whether he had charge or not.

Q. Did he ever give any instructions to you? A. No, sir.

Q. Have you attended any meetings over at
3612 George Caracas' store? A. No, sir.

Q. Have you ever been there? A. I have been there, yes, sir.

Q. Did you ever meet anybody there who had worked for Spencer Kellogg & Company? A. Yes, sir, I met somebody there.

Q. Who did you meet there? A. I came across Mr. Medlicot and shook hands with him.

Q. Did you meet any other men there who worked for Spencer Kellogg & Company? A. John Ampter and George Caracas.

Q. Who else? A. That is all I saw. I did not 3613
see anybody else there.

Q. You are sure of that? A. Yes, sir.

Mr. Axtell: I might state for the benefit of counsel and the Court that when I met Mr. Medlicot I asked him to get hold of as many former employees of the company as possible for me, and he arranged a meeting, and about four or five men, whose names I do not remember exactly, appeared one Sunday morning about 11 o'clock at a store, I think it was Caracas' store, somewhere on Anderson Avenue. I went there with Mr. Medlicot and questioned these 3614
men, making notes in pencil of what they said. No statements were signed.

Q. When did you leave the employ of Spencer Kellogg & Company? A. 1926.

Q. Fix the date as nearly as you can. A. New Year's Eve.

Q. Under what circumstances did you come to leave? A. I was discharged.

Q. By whom? A. By Hank Johannis and Mr. Stover. 3615

Q. Did you know Marty Dinkel? A. I did.

Q. Did he run the boat in the day time while you were running it at night? A. Yes, sir.

Q. Did you see him? A. I seen him in the morning.

Q. You saw him in the morning? A. Yes, sir.

Q. I understood that you had no occasion to see this boat during the last month before the accident, is that right? A. Yes, sir.

Q. Then how do you know that she was

3616 siphoned after every trip? A. I have seen it there. I have siphoned it out myself.

Q. During that last month? A. Yes, sir.

Q. I understood from what you said before you did not even see the boat. A. Yes, I was operating it, working it.

Q. During the last month before the accident? A. Before the accident.

Q. During the last month before the accident? A. Yes, I was operating her and I was pumping the water out. I had to catch the water, and then I had a bag caught on the propeller once in a

3617 while when it was low tide at the dock.

Q. You did not mean to say for a month before the accident you had not operated the boat? A. I had operated the boat before the accident.

Q. I say, within a month? A. Within a month before, yes.

Q. Within a month before the accident how often did you operate it? A. Making two trips every night.

Q. All through that month? A. Yes, sir.

Q. Then you operated the boat right up to the accident? A. No, not up to the accident.

Q. How long before the accident? A. A month

3618 before the accident. As I say, a month before the accident I was working days, I was not operating the boat.

Q. The accident happened on the 20th of December, do you know that? A. Yes, sir.

Q. During the month of December, 1926, did you or did you not operate this boat at any time, day or night? A. In 1926?

Q. Yes. A. Yes, sir.

Q. Did you operate it during the night or during the day in that month? A. During the night.

Q. Did you operate the boat regularly at night during December, 1926? A. Yes, sir. 3619

Q. What was the last night in December, 1926, that you operated the boat? A. Before the accident.

Q. Was it just the night before the accident? A. A few nights before that.

Q. Up until a few nights before the accident? A. Yes, sir.

Q. So you say during the first two weeks in December, 1926, you operated this boat regularly at night? A. Yes, sir.

Q. And every night you used this steam siphon to pump her out? A. Yes, sir. 3620

Q. And you made two trips a night? A. Yes.

Q. And you had to siphon her out after each trip? A. Yes, sir.

Q. Who was operating her during the day in that month? A. Marty Dinkel was operating her during the day.

Q. You are positive about that? A. Yes, sir.

Q. You are just as positive of that as anything else you said here? A. Yes, sir.

Re-direct examination by Mr. Axtell:

3621

Q. I understood you to say in the beginning you had not operated that boat during the month previous to her going down?

Mr. Englar: We all understood that.

A. No, I did not.

Q. You certainly said it. A. I did not say it; that month the boat went down I did not operate the boat.

3622 Q. That is what I understood you said. Now, Mr. Englar has asked— A. Not the month the boat went down. It was before the month it went down I operated her.

Q. She went down on December 20th, and then he asked you did you operate her during December, 1926, and you said yes. A. Yes, sir.

Q. Is that what you meant to say? A. Yes, sir, 1926.

Q. The boat went down on December 20th—I am not interested in the fact, I am interested in the state of your mind—if the boat went down on
3623 December 20th and you had not operated her within thirty days of December, did you operate her in December? A. No, the month before December; November.

Q. You meant November? A. Yes.

Q. What you meant to say——

Mr. Englar: I object to telling him what he meant to say. If he wants to change again, I do not object to his changing.

Mr. Axtell: I am not responsible for the kind of employees you have there at 48 cents an hour. I am not responsible for
3624 this man. He is here.

By Mr. Jayne:

Q. When Marty Dinkel was running the boat it was in 1925? A. Yes, sir.

Q. When you say you ran in December, was it December, 1925, instead of December, 1926, when the accident took place? A. Part of 1925 and part of 1926, before the accident.

Q. Will you listen to the question? Capt.

Rohweder, did you ever see him? A. I seen him when I went home in the morning. 3625

Q. You know he was there two or three months before the accident, don't you? A. He was there, yes, sir.

Q. Marty Dinkel was not running the boat while Capt. Rohweder was running the boat, was he?

Mr. Englar: I object.

The Court: I think we ought to understand the witness and see what is in his mind. It is almost evident that he is confused and does not understand some of these questions. 3626

Q. Marty Dinkel was not running the boat those months Rohweder was there, was he? A. I do not believe he was. I could not exactly explain that. I was working nights and him days.

Q. You said in December, 1926, Marty Dinkel was running the boat in the day time. Did you mean that? A. He was running the boat in the day time.

Q. When? Do you have any sense of one year from another? A. He was running it often, right along. 3627

Q. You remember this boat sank with these men on her? A. Yes, sir.

Q. Wasn't there a Capt. Rohweder running her in the day time then? A. Yes, sir.

Q. Were you running her nights while Capt. Rohweder was running her in the day time?

Mr. Englar: I submit counsel should not argue with the witness. Further, he stated positively both ways.

3628 The Court: I do not think he is arguing. He wants to understand him.

A. No, I have not been running her.

Mr. Englar: Will you read the last question and answer, please?

(The stenographer repeated the last question and answer.)

The Court: He said yes right along.

Mr. Jayne: He said no.

3629 Q. You were not running her that time? A. No, only in Marty Dinkel's time.

Q. How many times were there when you saw ice in the river and turned back? A. Only once.

Q. Other times when you saw ice in the river you did not go out? A. No.

Mr. Englar: I think that is clearly objectionable.

The Court: Sustained.

Mr. Englar: And I move to strike that out.

The Court: Strike out the answer. You
3630 assume he saw ice in the river at other times.

Mr. Jayne: I thought he said he saw it several times.

The Witness: Only once.

Q. How many times did you see ice in the river? A. Only once while I was running the boat at night.

Q. That was the year before? A. Yes, sir.

Q. Before you saw that ice in the river had

anybody discussed with you what you were to do in such an event? A. No, sir. 3631

Q. So you turned back on your own judgment, is that it? A. Yes.

By Mr. Axtell:

Q. Didn't you say on direct examination to me there was twice you saw ice in the river? A. Only once.

Re-cross examination by Mr. Englar:

Q. I understood you to say quite distinctly that during part of the time you ran the boat at night Marty Dinkel was running it in the day time, and during the latter part Capt. Rohweder was running it in the day time, is that right? A. Yes, sir. 3632

Q. You said you overlapped with Capt. Rohweder about a month, didn't you? A. A month before.

Q. You said that Capt. Rohweder was running it in the day time when you were running it at night for about a month? A. Yes, sir.

Q. But when another counsel examined you I understood you to say you only ran her when Capt. Dinkel was running her in the day time? A. Yes, sir, and in the end part of the time when Capt. Rohweder was running her. 3633

(Witness excused.)

Mr. Axtell: We have a Russian here who can speak seven languages, but English is not one of them. This lady is a law student, and she speaks Russian; one of my associates has brought her here.

3634 The Court: Is this lady in your office?

Miss Iogolevitch: I am a graduate of a law school.

Mr. Englar: Is this witness a survivor?

Mr. Axtell: I believe he was on the boat.

The Court (to Miss Iogolevitch): Are you admitted to the bar?

Miss Iogolevitch: No, I am awaiting admission right now.

Mr. Axtell: Have you passed your bar examinations?

3635 (The answer was inaudible to the stenographer.)

Mr. Axtell: She has completed her course of study.

Mr. Englar: We will accept the young lady as interpreter, your Honor.

(Miss Raymonde Iogolevitch was sworn as interpreter, for the witness Paul Boots.)

PAUL BOOTS, called as a witness on behalf of the claimants, being duly sworn, testified as fol-
3636 lows, through the interpreter:

Direct examination by Mr. Axtell:

Mr. Englar: Don't you speak English, Mr. Boots?

The Witness (without the aid of the interpreter): I speak English a little bit. I cannot explain everything that was in the launch.

Mr. Axtell: I tried to speak to him,

but I think you will get as far as you did with the other witness. 3637

Mr. Englar: You examine him in Russian. I may examine him in English.

Q. How old are you? A. 34.

Q. Are you married or single? A. Single.

Q. You were born in Russia? A. Yes, I was born in Russia.

Q. Do you speak other languages than Russian?

(This question was not put by the interpreter, and the witness answered in English as follows:) 3638

A. Yes, I speak seven languages.

Q. Seven languages, but not English? (This question was not put by the interpreter, and the witness answered in English as follows:) A. A little bit. I stay here only seven months. It is impossible to learn perfectly English, but always between Russian, German and French. I think that is impossible.

(The balance of the examination was had through the interpreter.) 3639

Q. You were on the boat "Linseed King"? A. Yes, sir.

Q. Was that your first trip or not? A. No.

Q. How many times had you ridden before on her? A. I was working five weeks and during those five weeks I took the boat each time.

Q. What kind of work were you doing over there? A. I loaded bags, and heavy work.

Q. On the boats? A. No, inside.

3640 Q. Were you working by the hour? A. No, I was working by the week.

Q. What were your wages? A. I received $28.20.

Q. How many hours a day? A. Ten hours.

Q. Were you not working for 48 cents per hour? A. I was working the first week.

Mr. Axtell: Is that an answer?

The Interpreter: That is the answer.

Mr. Axtell: I do not understand the answer.

3641 The Interpreter: He says he was working for 48 cents an hour the first week.

Mr. Axtell: That is an answer.

Q. What time did you get down to the pier for the boat that morning? A. On my watch it was six o'clock.

Q. You mean by the watch you carry in your pocket, "by my watch," you mean? A. By my watch in my pocket it was 6 o'clock.

Q. Will you tell the Court what happened from the time you got to the dock? Just tell the story of going aboard the boat, how many people were there, how many were on the boat and what hap-

3642 pened.

The Interpreter: Do you want me to translate it sentence by sentence?

Mr. Axtell: Yes, or paragraph by paragraph, as you like.

A. I came to the dock and I thought the boat would not come because there was quite a big crowd and the river was full of ice, the New Jersey part of the river was full of ice particularly.

Q. Do you mean the New York or the New Jersey side too; you were on the New York side? A. I say the New Jersey side was full of ice, the opposite side. 3643

Q. You could not see across the river at 6 o'clock in the morning, could you? A. At 6:20 I saw the ice when the lights were put out. I saw the ice when the lights were put out. At 6:25 the boat came in, about 6:25. About 6:25, when the boat came, a big crowd surged into the steamer, and they all tried to get in, because the captain said that was the last trip, there would be no other trip today. A very short time after the boat left the docks there was a great big shock, as if the boat came in contact with something, but the boat kept on going just the same, did not stop. In about three or four minutes I noticed a part of the boat was going right into the water, and I sensed there was something wrong. I did not say anything, although I sensed something was wrong, because I feared it would create a panic, and I hoped we would get through all right. 3644

By the Court:

Q. Where were you in the boat at this time? A. On the stern. 3645

By Mr. Axtell:

Q. Outside the cabin door or inside the cabin door? A. Inside the cabin door. In another minute and a half I felt some water on my feet, and I heard a cry, "Water in launch," and a general movement, and in a moment a still louder cry, "Water in launch." The boat was going

3646 deeper into the water and it was so crowded that we closed the door entirely in the room where we were standing. The boat got into the river deeper and they were pushed backward and somebody opened the door in that room and some of the people started getting out. I was not the first to get out. Before me there were a few people to get out. When I did get out the boat was almost entirely in the water. I heard a loud cry and more cries, and when I got out the water was reaching my knees already. When I got out there the boat was sinking very, very fast, and I im-
3647 mediately took off the coat I was wearing, a half coat, and I jumped into the water. The moment I jumped down I went down the first time, but I came up and I started swimming, and I swam freely for a short time and I grabbed hold of a piece of ice and floated on it for a while. While I was floating people near me were drowning. I saw them distinctly going down and drowning. I was carried on by the tide. I was on that piece of ice for about ten minutes, after which it broke down, and I was in a free space and I was able to swim again. I found another piece of ice which was stronger than the first one, on which
3648 I stayed for a while. While I was on that piece of ice I saw the boat going down and people on it going down with it. All this was happening within 30 minutes after the catastrophe.

By the Court:

Q. What is that? A. 30 minutes had already elapsed since the second shock of the boat.

Q. I understood him to say he clung to a piece of ice and while clinging to it he saw the boat going down.

The Interpreter: Yes.

Q. How much time elapsed at this time since he had left the boat? A. 15 minutes. 3649

Q. So the boat did not go down until 15 minutes after you jumped off? A. I could not see the boat. I could see pieces of something or other, to which people were clinging at the place at the boat had been before. I could not see a distinct part of the boat, but a few people and the water rising, rising and rising higher and higher. The second ice broke down again, and I had to gather all my strength, and in the meantime I saw a tugboat from New Jersey coming toward me. They threw me a life belt, which was a rotten one, and consequently I went down again, and they finally threw me something which I could not grab, and they threw me a piece of rope which I grabbed, and they took me on the tugboat. 3650

By Mr. Axtell:

Q. Did the boat go down quick when the water came in? A. Very fast, very quickly.

Mr. Axtell: You have used the term here "minutes" in your interpretation, which would indicate possibly 15 minutes elapsed from the time the boat struck ice until he was in the water. What do you mean by minutes, I am asking you, interpreter? 3651

The Interpreter: I mean by minutes the universal understanding, 60 seconds in each minute.

Mr. Axtell: Is that Russian too?

The Interpreter: Yes, the time measnrement I believe is the same all over the world.

3652 Mr. Axtell: That is one point of similarity.

The Interpreter: Yes.

The Court: So she meant 15 minutes.

Mr. Axtell: Did the witness say to you minutes?

The Interpreter: Yes.

Mr. Axtell: Ask the witness if he will give us his idea of how long one minute is by just holding his hand up in the air for one minute. When he thinks a minute has elapsed let him drop his hand.

3653 (The witness did so.)

Mr. Axtell: That is 35 seconds.

Q. Do you mean that the time that elapsed between when she first struck ice and when you were submerged in the water it was approximately 28 times the period you just indicated?

The Court: Why 28 times?

Mr. Axtell: That is approximately, 28 times 35 seconds, would be 15 minutes.

A. I cannot figure out exactly the time when I
3654 was in the water at the time I was in the water and the time I jumped from the boat. The way I figured the time was when I was saved by the tugboat, I pulled out my watch and I figured the time.

By the Court:

Q. Did you figure you had been in the water then about 15 minutes? A. Yes—no, not 15 minutes, but 40 minutes.

By Mr. Axtell: 3655

Q. Did you see any other men get out of the boat? A. Yes, I saw them.

Q. Where, which way? A. The person that got in front of me jumped in the water too, the persons who got in front of me.

Q. Is that the only one you saw? A. No, I saw some people before who jumped from the other part of the boat.

Q. Which part of the boat was that?

Mr. Englar: You mean where he jumped from, or the others jumped from? I do not think it is very clear. 3656

Q. Which part of the boat did the others jump from? A. When I got on the deck I saw people jumping from the other side of the boat. I was on the stern, therefore they must have jumped from the bow.

By the Court:

Q. You saw no one jumping off at the rear? A. No, I saw no one jumping from the sides.

Q. Or anyone coming through the windows? 3657
A. (No answer.)

Mr. Englar: He said no one jumping from the sides.

By Mr. Axtell:

Q. The Court asked did you see anyone jumping from the rear, the stern? A. Yes, sir, I saw somebody jumping from the rear.

3658 Q. How many? A. I cannot say how many.

By the Court:

Q. Did you see anyone trying to come through any of the windows? A. I saw hands, and I heard the noise of breaking glasses, but I did not actually see anybody jumping from the windows.

Q. Did you see anybody wearing a life preserver? A. No, I did not.

By Mr. Axtell:

3659 Q. Did you know there were life preservers in the boat? A. Yes, sir.

Q. Why didn't you take one with you before you jumped overboard? A. It was impossible.

Q. Why? A. If I took the time to detach it from where it was attached I would have remained on the boat and would not have had a chance to jump off.

Q. Did you ever receive any instructions, were instructions ever given during the weeks you were there before as to the use of life preservers, or what to do in case of accident? A. No.

Q. Now, did you ever ride on the boat any
3660 other time when they had a big crowd on it? A. Yes, sir.

Q. How many times? A. One time.

Q. Who was captain of her then? A. I do not know his name, but it was the old captain—Rohweder.

Q. The man who was on her when you went down? A. Yes, sir.

Q. The same man? A. The same man.

Q. Do you remember whether at any time before that there was any ice in the river? A.

There was a storm once and there was some ice, but not as much as this time. 3661

Mr. Axtell: I did not understand that answer. There was what?

The Interpreter: There was a big storm once upon a time and some ice appeared, but not quite as much as this time.

Q. You said you have been working there five weeks? A. Five or six weeks.

Q. Was the boat running when there was ice in the river on this occasion you spoke of before this accident? A. Yes, sir, and I noticed quite 3662 a few of the workmen were afraid to go on and did not go on, but the boat was running.

Q. Who was the captain then? A. Rohweder, the same gentleman.

Q. The same captain? A. The same captain.

Q. Did the boat run all right otherwise than the ice—was everything else all right except for the ice?

The Interpreter: On what occasion?

Mr. Axtell: Any occasion.

The Interpreter: At all times? 3663

Mr. Axtell: Yes.

A. One evening, I do not remember the exact date, the motor stopped working, and we were spinning around for a short while.

Q. Do you know whether there had been any water in the bottom of that boat on any other occasions or not before this accident? A. No, I do not know.

Q. What education have you had? A. The

3664 highest education, which is the Russian and European equivalent of a college education.

Q. Were you training for some particular service when you learned all these languages? A. I was training for the diplomatic service with an embassy or consulate.

Q. This was before the revolution in Russia, I take it? A. Yes, sir.

Q. What university did you graduate from in Russia? A. I graduated at the Institute of Eastern Languages in Petrograd, Russia.

Q. How many people were on that boat that
3665 morning of the accident? A. About 100 people.

Q. You said you were in the back, didn't you? A. Yes, sir.

Q. Were you back of the motor? A. Yes, sir.

Q. Was the space back of the motor filled with people or not? A. To the last degree. I could not lift my hand or lower my hand to get a handkerchief out.

Mr. Axtell: You may examine.

Mr. Jayne: I just want to ask him one question.

3666 By Mr. Jayne:

Q. How long did it take you to get from where you were standing in the boat to the outside of the boat? A. There was a fight going on to get through the door, and I am trying to figure out the time it took.

Q. Did you have to struggle to get out?

The Interpreter: That is what he said, I did have to struggle to get out, and I am computing the time.

Q. Which way did the door open, inward or outward? A. Inward. 3667

Q. Were you one of the first or one of the last to get out of the door? A. Near to the last.

Q. Why didn't more come out of the door? A. The water was rushing in all the time.

Q. Did the door ever close on the people as they were trying to get out? A. It stayed open.

Q. You say you did not have time to get a life preserver. Was that because you were engaged in the struggle to get out?

The Interpreter: I do not believe he made a statement he did not have time to get it. I think he said it did not pay him to get it. 3668

Mr. Jayne: Will you please ask the question?

(The question was read back.)

A. I did not think of the life preserver at the time.

Q. Was that because your mind was engaged in the struggle to get out of the boat?

Mr. Englar: Just a moment, your Honor, I object. 3669

The Court: Sustained.

Mr. Axtell: He already explained that.

Cross examination by Mr. Englar:

Q. Mr. Boots, at the time the boat left could you see the New Jersey shore? A. No, I did not see it.

Q. Could you see as far as the middle of the river when you were looking at the ice? A. From

3670 the docks I could see more than the middle of the river and I could see New Jersey too.

The Interpreter: He misunderstood my question, thinking I asked could he see it from the inside of the boat.

Q. Had the street lights been extinguished before the boat started? A. Yes.

Q. Were you taken to any hospital after this accident? A. Yes.

Q. What hospital? A. Harlem Hospital.

3671 Q. Do you recall on what day it was you say you saw ice on another trip—do you think it was the day before or the day before that? Can you fix it at all with reference to the last trip? A. I cannot say exactly at all, but I think it was a few days before that accident.

Herman Casarta (official interpreter of the Supreme Court of the State of New York) was sworn and acted as interpreter for the following witness:

3672 DOMINICK D'ARCO, called as a witness on behalf of the claimants, being duly sworn, testified as follows, through the interpreter:

Direct examination by Mr. Axtell:

Q. Are you married or single? A. I am married.

Q. Were you on the "Linseed King" when she went down? A. Yes, sir.

Q. Do you remember about the accident? A. Yes, sir.

Q. Tell the Court all about it. A. I remember 3673
that the boat left about half past six in the morning to go to New Jersey for people to go to work. After the boat started to go, the boat had difficulty, as the river was full of ice. After the boat reached the middle of the river it struck two big pieces of ice, there were two blows, or jerks, then the boat began to sink on this side (witness indicating the right hand side, or the starboard side of the steamer, or of the boat).

Q. Go ahead, tell what else happened. A. I was near the captain by the rudder, and I broke a glass that was there and threw myself into the 3674
water, I mean by that I was attempting to throw myself in the water after I broke the glass, but there were people who got hold of me by the leg and were trying to pull me in. While I was in that position I had about two feet of water above my head. Then they finally let go of me and I went into the water, and I landed on a piece of ice, where I was for about ten minutes. After a while the piece of ice upset, or broke, and I found myself again in the water, and I found myself again on another piece of ice. Then the second piece of ice, after 13 or 14 minutes upset too, and I was under it, so that I could not come up again. 3675
While I was swimming under water trying to get to the surface of the water, I felt somebody get hold of me. And when this other person got hold of me by the foot, he dragged me down, further down, I do not know, for about 10 feet, I guess; then I made a terrible effort to free myself, and finally I succeeded. And I succeeded in getting to the surface of the water, but I could not come out with my head because I struck against a piece of ice which obstructed my way. While I was

3676 struggling that way I saw a little hole, and I went to it, and I came out with my head, but my arms were frozen. I was in that position and I was struggling with my feet, my arms, any way I could, in order to keep myself near the surface of the water, and the piece of ice was drifting somewhat, then I found myself all of a sudden near the boat, and somebody helped me.

Q. Which boat do you mean there? A. Somebody on the "Linseed King" was there and pulled me off the ice.

Q. You came floating around the old boat that
3677 had gone down? A. At times I was far from it, then the current brought me near it.

Q. Were there waves out there in the river or not? A. No, it was all ice.

Q. All ice? A. Yes, sir.

Q. You said the ice cakes tipped over with you? A. Well, but the river was full of broken pieces. You could see a clear spot of water for about 3 or 4 feet, but that is all.

Q. How thick were these pieces of ice? A. The first one I struck, I think it was about 4 inches thick.

Q. Did you see any thicker pieces, or see any
3678 pieces frozen together, two or three pieces in a lump? A. Yes, sir.

Q. Will you explain in a little more detail what you did see? A. There were pieces of ice of all kinds and description, small, big, and I cannot pick them out.

Q. Do you know what the boat hit? A. Against the ice.

Q. Did you see any other objects around there, any logs or timbers or wreckage from other boats, or things of that kind in the ice? A. No, no piece of wood at all.

Q. Did you see anybody else hanging on any such wreckage as that, aside from the "Linseed King", afterwards? A. I saw many people were struggling with pieces of ice, as well as near the boat, but their efforts were not successful and many of them would go under. 3679

Q. Did you see many men go down that were out there? A. Yes, I saw some, especially one by the name of Roberts.

Q. Roberts? A. Yes, the chauffeur.

Q. Al Roberts. You saw him go down? A. Yes, sir, I saw him go down. Before going down he said to me, "Dominick, please help me, because I also have a family, I am a father also." 3680

Q. Were you on the same cake of ice as he was? A. He was away from me, and he was about 4 or 5 feet away from the "Linseed King" at the time I saw him.

Q. You could not help him? A. No, I could not move myself. I was rather heavy in the water. I had an overcoat on and the rubber shoes.

Q. Did you see any other men besides Roberts go down? A. I saw a group of five or six people holding on to each other, some of them were grabbing each other by the neck, and they went down also. 3681

Q. All of them? A. Yes, sir.

Q. Do you know the names of any of them? A. I know two more persons that I saw. If I see them or their pictures I would recognize them.

Q. Now, aside from this group of 5 or 6 you saw hanging on to each other and all go down together, and Mr. Roberts, did you see any others go down? A. Well, after that I did not notice

3682 anything else; I was concerned with my own life, with the saving of myself.

Q. And you saw 6 people drown that had gotten out of the boat? A. Yes, sir.

Q. And their bodies went down and you did not see them come up again? A. When the people went down, the piece of ice would come on top of the place where they had sunk, and I think that made it impossible for them to come to the surface.

Q. They did not come up? A. No. I did not see them at all.

3683 Q. How many were there outside on the ice, that you remember seeing on the ice, or hanging on to the boat, or different things, after the sinking? A. I noticed about 10 or 11, I may say, that were holding on to the boat; then the boat would move again, and they would go down into the water.

Q. Besides those 10 or 11 on the boat, did you see any others on ice? A. I saw some people on the ice, but it was rather dark for me to distinguish them all.

Q. Did you see this man here, do you remember seeing him? A. I don't remember.

3684 Q. You did not make any count of all the people around there then to see how many people were out there? A. You mean on the ice?

Q. Yes. A. No, it was rather dark.

Q. Was this your first ride on that boat, or had you ridden there before? A. Every morning since I started to work, that is, since 1902.

Q. Nineteen what? A. Since 1922, pardon me.

Q. What were you working at over there? A. At first I worked for four or five months as worker on the dock. Then I stopped working

there because the boat was not doing any service there, and then I returned again some time after. 3685

Q. Longshore work you mean, loading and unloading? A. I was stevedoring.

Q. How much an hour did you get for that work? A. 48 cents an hour.

Q. Now, had you been riding on the boat right along since 1922? A. Yes, sir. I took the boat since I had been working. I was working 11 hours a day, and sometimes at night I would take the 125th Street boat.

Q. You know Mr. McHale here, don't you? A. Yes, sir.

Q. Was he your boss? A. Yes, sir. 3686

Q. Did you have a conversation with him within the last few days, maybe yesterday or the day before, I do not know when it was, in the court house here? A. Yes, sir.

Q. Tell the Court what Mr. McHale said to you and what you said to him. A. He said to me that I had lost the job and I could not work—

Mr. Axtell: Mr. Interpreter, please be careful to get this interpretation carefully. I want just the words that this witness says. 3687

A. He said that I had lost my job, and he said that nobody would ever get anything, and I said to him, "You saw me there; I cannot work because my arms, my hands are frozen, they are stiff like a piece of wood, and when there is a heavy load to be handled I cannot get hold of it, because it slips from my hand on account of lack of enough strength."

Q. Did Mr. McHale tell you you were going to lose your case, and if you testified here you would

3688 lose your job, too, is that what you told me in the hall this morning? A. Yes, sir.

Q. You were working there recently, were you? A. I went there to look for work, because elsewhere nobody wanted me, and I have a family to support.

Q. You have been over there working, or trying to get work recently, haven't you? A. I went back to work there. I worked on September 7th last of last year.

Q. Did Mr. McHale tell you how he knew you were going to lose your case?

3689 Mr. Englar: I object to that, your Honor. I do not think this conversation between the dock superintendent and the witness is competent when he gets into this discussion.

The Court: Sustained. He already told us about it, and it came in without your objection.

Q. On previous occasions you had ridden on this boat a lot of times, hadn't you? A. Yes, sir, every morning when I went to work.

3690 Q. Tell the Court what was the condition of the boat, how she ran on other days before this, how many people were carried, all about it? A. With other boats there would be about 25 passengers; with the "Linseed King" there would be a maximum of about 60 people.

Q. How many people do you say they had on the morning of the accident? A. I do not know. I did not count them. There may have been 90 or 100.

Q. Had you ridden other mornings before that when there was a seed boat in to be unloaded,

and they had advertised for extra laborers? A. Yes, sir. 3691

Q. How many men had they carried on those occasions? A. Sometimes the boat would make two trips, come back for the remainder of the people.

Q. I asked you a question, how many people did they carry on other times before that? A. Well, before the accident, for each trip, the boat would have about 25 people or more, between 25 and 30 people.

Q. Did you ever see any ice in the Hudson River before that when the boat was running? A. Yes, I saw ice on Saturday night when I went home by the ferry, and also on the following Sunday, and on Sunday I went there by taking the ferry at 125th Street, and I heard the noise made in breaking the ice. 3692

Q. By the ferryboat? A. Yes, sir.

Q. You mean the day before the accident, then? A. Yes, sir, and also the previous Saturday.

Q. Now, do you remember whether there was any ice in the river earlier, before that—that is, between the 1st of December and say the 17th—do you know anything about that? A. Yes, sir, there was some ice, but on the New York side. 3693

Q. Now, how about the year before? Did you ride on the boat the year before this accident, 1925? A. Yes, sir, always by the same boat.

Q. Do you remember whether they ran the boat while there was ice in the river in 1925? A. No, when there was ice the boat was stopped and some years before, when the weather was bad and there was lots of ice and the current was too strong, the boat would not be running.

Q. You are talking about 1922? A. No, I am

3694 referring to 1925. Well, in general, since I started, since 1922.

Cross examination by Mr. Englar:

Q. Am I to understand from your testimony that when there was a seed ship to be unloaded it was customary for this boat to make two trips in the early morning? A. Do you refer to the morning that the "Linseed King" sank?

Q. No, this is a general question. I am asking you whether, when there was a seed ship to be unloaded, it was customary on other occasions
3695 for the "Linseed King" to make two trips instead of one, between 6 and 7? A. Yes, sir, when there were lots of people it would make two trips.

Q. Now, you testified for the District Attorney in this case, didn't you? A. Yes, sir.

Q. Is it your testimony that there was a great many more people on the boat on the morning of the accident than there had been on previous trips? A. The morning of the accident there were more people, and I remember that 9 or 10 people remained on the dock.

Q. The boat was more crowded on this morn-
3696 ing than you had seen it before, is that correct? A. It was more crowded than it was before. I remember it was so crowded that we were almost jammed.

Q. Now, didn't you give the following testimony for the District Attorney: "Q. And how many men were on the boat? A. I do not know; maybe he got a full load, I don't know; maybe 80 or maybe some more." A. Yes.

Q. The answer is "Yes"? A. Yes, I could not talk fully there, as I did not understand well.

Q. Did you have any conversation with the captain of the boat on the morning of the accident, or did you hear him have any conversation with anybody else on the boat or at the dock? A. I did not talk to him exactly, nor did I see him talking to anybody else. We just greeted each other, that is all. 3697

Q. You have been working for Spencer Kellogg & Company since this accident? A. Yes, I went to work for them on September 7th.

Q. You have never been discharged, have you? A. If you refer to the present, I have not been discharged. They just referred me to the accident once. 3698

Q. You have had time off to come over here to this trial, haven't you? A. I told them I had to go to court and they said to me, "Go ahead".

Q. You have filed a claim, or started a suit against Spencer Kellogg, haven't you? A. Yes, sir, because I cannot work any more.

Q. Do you remember who it was that pulled you back on to the "Linseed King" after you had been in the water? A. I do remember that he was a Spaniard. If I saw him in court I would recognize him. I do not remember his name.

Q. Will you look and see if you see him in court now? A. No, he is not here. 3699

Q. Is that the man? (Indicating) A. No. (Indicating Mr. Riquelme.)

Q. You are sure of that? A. No, he is working now.

Q. How far do you think you ever got from the boat? A. The most I got away from the boat was about 15 or 16 meters, I got away from the boat this way by somersaults on the ice, as well as in the water.

3700 Q. Isn't it a fact you were only in the water a few minutes and you never did get six feet away from the boat? A. No.

Q. Now, after you did all this swimming and diving that you have told us about, how did you get back to the boat? A. Well, I found myself near the boat because the current was carrying the "Linseed King" upward, and I found myself nearer the "Linseed King".

Q. How did you get out of the boat, through what sort of an opening? A. Nearer the captain there was a window there, and I broke that window and got through.

3701 Q. Where was Al Roberts standing at the time of the accident? A. Roberts was also near the captain from me.

Q. You speak of yourself as working on the dock. Just what sort of work did you do? A. Stevedoring.

Q. I do not want you to call it, but what did you actually do with your hands? A. I was packing or baling oil cakes.

Q. Where? A. On the dock.

Q. Where did these oil cakes come from? A. Those oil cakes came from the press room.

3702 Q. That is the cake formed by the seed after the oil has been pressed out of it in the press room? A. Yes, sir.

Q. I understand you did not make any statement to the captain of the boat at all on this morning. A. While I was on the dock he wanted me to go downstairs. I said no, I am afraid there was too much ice in the river, and I remained on the boat.

Q. That is the only conversation you had with the captain that morning? A. That is all.

Q. Did you have any talk with him after the boat left the dock? A. No. 3703

Re-direct examination by Mr. Axtell:

Q. How much do you weigh? A. Before I weighed about 130 pounds, and at present I weigh about 111 pounds.

Q. Just step down here on the floor, will you? Stand over there beside that tall man. (Indicating the interpreter.)

Mr. Axtell: How tall are you, Mr. Interpreter? 3704

The Interpreter: 6 feet.

Mr. Axtell: Stand up close to him. He must be 4 foot 10 to 11, or 5 feet.

Mr. Englar: I should say a little below 5 feet, 4 feet 10 or 11.

Mr. Axtell: He is pretty small. I would say 5 feet.

Q. Did you pay your fare on the ferryboat yourself out of your own pocket when you rode on the ferryboat? A. Yes, sir.

Mr. Englar: You are referring now to the Edgewater Ferry? 3705

Mr. Axtell: Yes. I am making the point of the fact this company did not pay fares of the people on the ferryboat.

Mr. Englar: On the Edgewater Ferry.

Mr. Axtell: On anything but the "Linseed King" you did not pay the fare.

FRANK SOSNICKI, called as a witness on behalf
3706 of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. What is your occupation? A. American.

Q. What do you work at? A. Blacksmith.

Q. You were born in another country? A. Yes.

Q. And you are an American now? A. Yes, sir.

Q. What country were you born in really, Poland? A. Poland.

Q. You are one of the men who came over to Joe Caracas' house Sunday? A. Sunday around
3707 9 o'clock.

Q. A couple of months ago, I do not know, some time ago, a cold day, I know that. You never worked for Spencer Kellogg, did you? A. Yes, I was outside contractor. My blacksmith shop was on Spencer Kellogg's property.

Q. Did you run a bus or something or other, have a contract with them to take their men to the ferry, yes or no? A. Yes.

Q. What did you do? When was it you carried the men to the ferry? A. 1922 and 1923.

Q. How much a week did you get—a week? A. $75 and gas and oil.

3708 Q. You ran a bus? A. Yes, sir.

Q. You carried their longshore employees and other employees to the ferry? A. Yes, sir; my son ran it from the Spencer Kellogg plant up to the ferry and back again, three trips in the morning and about two trips at night.

Mr. Englar: I do not see where this is leading to. I do not want to enter a formal objection, but I want to file a sort of caveat. I do not see that it has anything to do with the case.

The Court: I do not see that it does, 3709
but you did not object.

Mr. Englar: I do not want to object if it leads anywhere.

Q. Did you do that while the boat was being operated or while it was laid up? A. It was the winter time——

Q. Can't you answer a simple question yes or no? Did you do that while the "Linseed King" was laid up, or while it was running? A. The "Linseed King" was laying on the dock, then I ran to the boat.

Q. Then you ran your auto bus? A. Yes, sir. 3710

(No cross examination.)

PATRICK FLYNN, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Mr. Englar: Are those the cards we had photostated yesterday? 3711

Mr. Axtell: No, these are other cards.

Q. You are a police officer connected with the 12th Precinct? A. Yes, sir.

Q. And you have attended here with a police Blotter? A. Yes, sir.

Q. And certain pink—what do you call these cards? A. Aided cards.

Q. These cards relate to the body of Abe Burke, James Bassett and Harold C. Stevenson, who

3712 were picked up at 125th Street, or thereabouts, whose bodies were brought in? A. Yes, sir.

Q. On what date? A. On December 20th, at 7:30 A. M.

Mr. Englar: December 20th, that is?

Mr. Axtell: Yes, sir. I will ask that these be photoprinted, the same as the other cards were, and offered in evidence. We will furnish counsel with a copy.

By the Court:

3713 Q. Where were these bodies brought in? A. They were brought in at the 129th Street Ferry.

Q. Brought to the pier? A. Yes, North River opposite 125th Street.

Mr. Axtell: There was testimony of two witnesses yesterday about that.

Mr. Englar: I consent to the photostating, and I would like to reserve any objection I have until I examine them. I do not know that I will have any.

Q. You produced another series of cards: Barker, Charles, Norgrave, Ice, James Trotter,
3714 Johnson, Boots, Sullivan, Vega, Proven, Garcia, Jones, Valenzuea, Caracas, Mitchell, Ortic, Johnson, Bundio, Hooper, Barmer, Gold, Ludwig and Lang. Were they brought in on the 20th, will you tell us that? A. They were brought in on December 20th, 8 A. M.

Mr. Axtell: These are the ones one of the detectives talked about, but he had merely a list. These are the index cards. If there is no objection——

Mr. Englar: I think it might save a great deal of time to see the cards, but I want to reserve the right to object until we have the photostats taken and I examine them. 3715

Q. Will you leave these with me so I can get them photoprinted, or would you want us to send them up to the station house? A. I have to bring them back to the house until there is another subpoena for the cards.

Q. These are subpoenaed? A. They got to be returned each night to the station house.

3716

Cross examination by Mr. Englar:

Q. As to these bodies that were brought in, I understand there were three of those brought in from the river opposite 125th Street on the 20th of December, is that right? A. According to them cards.

Q. Have you any personal knowledge about their being brought in, or do you just have the cards in your custody? A. I just have the cards in my custody and the Blotter of the Police Station.

3717

Q. Did you bring the Blotter? A. It is right there.

Q. Does the Blotter contain everything that is on the cards? A. The Blotter contains the same thing as the cards contain.

Mr. Axtell: No, it does not. This is a general entry, and the cards are a description of the persons found.

Q. The name of the officer who brought the

3718 bodies in will appear on each card? A. It appears on the back of each card.

Mr. Englar: You can have them photostated.

Mr. Axtell: Yes. Let the police officer go with my representative so he will feel he is keeping custody of the documents.

Mr. Englar: Just a moment, Mr. Axtell, will you have somebody make a copy of the Blotter too?

Mr. Axtell: It is not going in the record at this trial, but for convenience I will ask
3719 the stenographer to make a copy of it.

(At this point a recess was taken until 2 P. M.)

(Met pursuant to adjournment at 2 P. M.; present as before.)

Mr. Englar: A day or two ago Mr. Axtell said he wanted us to produce all the survivors of this accident who were working in our plant. We have done that. This
3720 man named Darco was one of them, and there are three more here, as I understand it.

Mr. Axtell: We will call them in just a few moments.

The Court: Won't most of this testimony be cumulative?

Mr. Axtell: The difficulty is to prove how many were on there. We want to show how many were in the boat. We think that is important. If we could stipulate there

were 86 or 87 people in there, I think that would settle that. The captain said he thought 60. 3721

The Court: Are you willing to stipulate any number at all, Mr. Englar?

Mr. Englar: I am willing to stipulate there were about 60.

Mr. Axtell: That is not satisfactory. We know there were more than that. We have 58 dead bodies—50 dead bodies, that we know of.

GEORGE F. POLLARD, called as a witness on behalf of the claimants, being duly sworn, testified as follows: 3722

Direct examination by Mr. Axtell:

Q. You are dock master at 96th Street? A. Yes, sir.

Q. Are you employed by the City of New York? A. Yes, sir.

Q. How long have you been located at that pier? A. Since the 1st of January, 1926.

Q. How old are you, Mr. Pollard? A. 55. 3723

Q. Married or single? A. Married.

Q Where were you born? A. Albany, New York.

Q. How long have you lived down here in the City? A. Lived here for 40 years.

Q. Do you remember the "Linseed King"? A. Yes, sir.

Q. Did you ever see her come in at the dock and load men, yes or no? A. Yes, sir.

Q. What time did you get to the pier on the 20th, the day she sank? A. I could not say posi-

3724 tively, but I generally get there between 8:30 and 9:30.

By the Court:

Q. What pier?

Mr. Axtell: 96th Street, North River.

By Mr. Axtell:

Q. What are your duties? A. My duties are to collect wharfage and rentals in the district
3725 in which I am assigned to, from 52nd Street to 100th Street, North River, and to patrol the district at least once a day.

Q. I show you Exhibit K and I ask you if that is a picture of the dock showing her as she was on the 29th of December, 1926, that is, the south side looking out toward Jersey, taken the other morning? A. This was taken when?

Q. About a week ago. A. The dock is a little different at the outer end since then. The Dodge yacht was sunk there and the end of the dock was removed.

Q. When was that work done, do you remem-
3726 ber? A. That work was done last winter a year ago.

Q. What I want to find out is was it done before or since this accident? A. Since this accident.

Q. Here is a duplicate of Exhibit L. I think it was, showing the other side of the pier.

Mr. Englar: Taken at the same time?

Mr. Axtell: Taken the same day, about a week ago.

Q. Has any change been made since the sinking of the "Linseed King"? A. Yes, sir, there was a small ramp on the outer end of the pier. 3727

Q. Sloping down? A. Yes. That was removed by Merritt & Chapman and replaced by, I do not know who the contractor was, and when they rebuilt it they left the ramp out.

Q. You did not get to the pier on the morning of the accident until after it occurred, is that right? A. After it occurred.

Q. Had you heard about it when you got there? A. No, I had not.

Q. How soon afterwards did you hear about it —what time did you hear about it? A. I think it must have been 10:30, down at 52nd Street, North River. 3728

Q. Were you assigned there? A. That is where my office is, 52nd Street.

Q. I thought you had an office up at the other pier? A. No, sir, 52nd Street, North River. My district runs from 52nd Street to 100th Street.

Q. When you talked of arriving at the pier that morning, you meant 52nd Street? A. No, I meant 95th Street.

Q. You were up there then? A. Yes, sir.

Q. Did you go there every day? A. Yes, sir. 3729

Q. How many times a day? A. Just once a day.

Q. You usually made the visit in the morning? A. 79th Street first, and then 95th Street.

Q. Do you recall whether there was ice in the river on the 20th? A. Yes, sir, there was ice in the river.

Q. How much? A. There was a lot of floating ice. It looked as if some of it might have been fresh water ice that came down the river from up several miles.

3730 Q. All ice flows, doesn't it? A. Yes; salt water ice flows too.

Q. Do you remember anything about the condition of the river any days before that, yes or no? A. Yes, sir.

Q. What do you remember? A. There was some floating ice in the river on Saturday. I did not go on the district on Sunday. On the 18th there was ice.

Q. To what extent was there ice in the river on the 18th? A. To what extent?

Q. Yes, what parts of the river, and how much —in the middle of the stream, next to the shore,
3731 or both shores, or which shore, which was it? A. I think there was some ice on the New York side of the river inshore.

Q. Do you recall any other years in the time you have been here about what time ice comes down, or is found in the river around that section, 95th Street? A. I recall last winter.

Q. How was it last winter? A. We had ice there earlier than that in December.

Q. You mean 1926; are you talking about last winter? A. I am talking about 1926.

Q. The same year as the disaster? A. Oh, yes,
3732 that is right.

Q. Do you mean that year or the year before? I want to get it straight. When you said last year, did you mean 1926, or were you thinking back a year from 1926? A. I meant 1926, yes, sir. I was thinking about a tow that came down the river from Albany, how it arrived.

Q. Was that before this disaster? A. No—now let me see—my goodness, I don't really know without looking up my book.

Q. What tow was it, do you remember what

tug—do you know where she docked? A. Yes, I know where she docked. 3733

Q. Where? A. She docked at 51st Street, North River. There was a schooner and a barge, each had three masts on the front of the tow, and both boats were covered with snow, and it looked like an Arctic scene when these boats came down. I do not know just when it was.

Q. Was that 1926, last year? 1926, is that the year you are talking about? A. I am talking about December, 1926, yes, sir.

Q. Can you recall whether it was before or after this accident? A. I really could not. 3734

Q. You said there was ice in the river Saturday, the second day before the accident? A. Yes, sir.

Q. Do you recall whether you had seen any ice in the river at all the day before that? A. I would not say positively.

Q. How about the year before, do you remember whether or not the "Linseed King" was operated any time when there was ice in the river in 1925? A. I did not go there until the 1st of January, 1926.

Q. Where were you working before that? A. On the beaches from Fort Hamilton to Far Rock- 3735 away.

Cross examination by Mr. Englar:

Q. Do you keep any record of ice conditions, Mr. Pollard? A. No.

Q. You are relying entirely on your memory? A. Yes, sir.

Q. You have no concern with the ice, have you? It does not affect your business? A. No, only

3736 when there is a northwest wind and cold weather it freezes up the slips and we have a job moving boats in and out the slips, light boats getting them out, and loaded boats getting them in.

Q. Had you had any such trouble as that prior to the 20th of December, 1926? A. I would not say positively.

Q. And all that you remember distinctly as to ice before the 20th is that you saw some ice on the New York shore, isn't that so? A. Yes, sir.

Q. There was nothing about it that particularly attracted your attention? A. No. If I could get the date when this tow came down, I think that
3737 was after this accident, though.

Re-direct examination by Mr. Axtell:

Q. You look it up and let us know by telephone, will you? A. All right.

ANTHONY F. SCARUZZO, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

3738 Direct examination by Mr. Axtell:

Mr. Axtell: May I inquire if the payroll is available now?

Mr. Englar: No, the payroll will be here tomorrow, Mr. Axtell.

Mr. Axtell: With regard to the future conduct of this trial, I want to say to the Court we would like to produce the mate of the Buffalo, one of these tugs,—we had the captain here, but we found he was not

on board the boat at the time, and we would like to produce the pilot of the Socony barge or tugboat that was up there. Those two men have been out of town, and it is a little difficult to get hold of them. If the other side intend to bring them, if I can rely on them bringing them here, I would not worry, but we want them if we can get them. 3739

Q. What is your occupation? A. Driver for John J. McGarry.

Q. Where is that? A. A contractor in Edgewater. 3740

Q. Did you ever work for Spencer Kellogg? A. Yes, sir.

Q. Were you one of the men that I saw in Caracas' little store? A. No, sir.

Q. When did you leave Spencer Kellogg Sons? A. Last year sometime.

Q. How long did you work for them? A. Three or four years on and off.

Q. What did you do over there? A. I was hired on as a laborer, and every seed ship that came Mr. McHale would put me in charge of one of the hatches on the seed ship. 3741

Q. Were you on duty in that capacity on the 20th of December, 1926? A. Yes, sir.

Q. What time did you get down to the plant? A. I got down to the plant say about ten minutes to seven, a quarter to seven.

Q. Tell the Court what you know about this accident. A. On the morning of December 20, 1926, I left my house at 6:30 sharp; coming down Gorge Road, I heard some screams and sounds down on the river front. Thinking that there were a bunch of fellows that had already been

3742 celebrating the first thing in the morning, I thought to myself they must be feeling pretty good. I followed on down on my own business to go to work. When I got to the plant I rung up my card, got my knives and hooks, and went up on the ship, and waited until almost five minutes to seven, and I did not see no men getting around. I stopped to look over to see if the "Linseed King" had arrived.

Q. Were you expecting laborers on her? A. Yes, sir; just as the seed ship had been in we generally get a bunch of men through the agency, or whatever way they come on looking for work.

3743 Q. They come by the "Linseed King"? A. Yes, sir; some come by the "Linseed King" and some by the ferryboat, if they do not know the "Linseed King" was there. As I looked over the side to see if the Linseed King was coming there happened to be a longshoreman there, whether he was a decker or a boss, he saw me looking over the side, and he said: "What are you looking for, Johnny?" I said, "The 'Linseed King'." He said, "What kind of a boat was it?" I said, "A small launch to carry the men back and forth."

3744 Mr. Englar: I object to the conversation.

The Court: Sustained.

Q. Tell what you saw.

The Court: You are not permitted to tell us what somebody else said to you, so simply answer the questions put to you.

Q. What did you observe? A. I observed a lot of ice in the river coming down on the Jersey side.

Q. Did you see the "Linseed King"? A. I couldn't see nothing of the "Linseed King." 3745

Q. Did you hear any more yells, or was that all over? A. No, it was all over, then I realized what the screams were and the sounds were.

Q. How long after this, when you were looking for the boat, how long a time elapsed since you heard the screams? A. After 7 o'clock.

Q. About a half an hour? A. Yes, sir.

Q. When did you first learn that the "Linseed King" had gone down? A. Almost at 7 o'clock. I asked the longshoremen. They sent a lifeboat out, I think.

Q. How did you find out about it? Was anybody brought into the shore? A. Not that I know of. 3746

Q. No survivors were brought in there? A. No.

Q. Do you know if the boat was closer to the New York shore than she was to New Jersey? A. I could not tell you.

Q. Had you ever ridden on the "Linseed King" yourself, yes or no? A. Yes, I rode twice.

Q. How recently had you ridden on her? A. Before the accident, you mean?

Q. Yes. A. I could not well say. I was out of the employment. I went over to get my clothes, I was working for the Pennsylvania Railroad. 3747

Q. Were you in their employ at the time of the accident or not? A. Yes, sir.

Q. How long had you been working for them at that time? A. I could not say; six or seven months anyway.

Q. Had you ridden on the boat that six or seven months? A. No, sir.

3748 Q. Had you seen the boat? A. Yes, sir.

Q. Where did you see her? A. I saw the boat at the pier where they always docked it.

Q. Did you notice anything about the condition of the boat, yes or no? A. Yes, sir.

Q. What did you notice? A. I noticed her two weeks previous, before the sinking of the "Linseed King", that they had a pump there on the dock, on the pier, which they used with a pipe that would bend in any shape you wanted it to be under the boat and pump the water out of it.

Q. Did you ever see them using that pump? A. Once or twice I saw them using it.

3749 Q. How recently before the accident did you see them using it? A. I am just telling you about two weeks before was the last time I saw it in use, but it was still there on the day of the accident.

Q. Do you know anything else about the condition of that boat, yes or no? A. Outside of that up at the restaurant I met Capt. Rohweder one morning four days before the sinking of the "Linseet King"——

Mr. Englar: Just a moment. That is
3750 not in answer to the question.

Q. You had some conversation with him about the boat? A. I did.

Q. What was that about, her condition? A. That would be included in the condition, yes, sir.

Q. What was the conversation?

Mr. Englar: I object to it, your Honor.

Mr. Axtell: This is the captain of the boat.

The Court: Overruled.

Q. The Court rules you may answer. What did he say and what did you say about the condition of the boat? A. I said, "Captain, are you going out with the boat this morning?" He said, "Yes." I said, "Did you go out with the boat this morning?" He said, "Yes." I said, "Gee, you are taking an awful chance," those are the words I used. He said, "I know, Tony, but this is the last week. I intend to finish out and quit." They were the two words he spoke to me. 3751

Mr. Englar: I move to strike it out.

The Court: It does not bear on the condition of the boat. It does not hurt you, but I will strike it out if you want it out. 3752

Mr. Englar: I would like it artickeu out.

The Court: Strike it out.

Q. Was there anything said at that time about the condition of the boat as to why it was taking a chance in running her?

The Court: You must not lead the witness.

Mr. Axtell: I do not know how else to ask it. I have not talked with him. 3753

By the Court:

Q. Was anything further said other than what you have just undertaken to tell us? A. The only thing that made me say that was that I saw that pump in use for pumping water out of the boat. That was all, your Honor.

Q. You had no further talk with him? A. Not after that, no more.

3754 By Mr. Axtell:

Q. Do you know whether there was ice in the river on any day before the accident or not? A. I would say about five or six days before that I did see ice, very little, not much; it had started to form up.

Q. Where? A. Coming down the river with the tide.

Q. How did you notice that? A. From the dock you can always see that. Our dock extends out.

Q. Was it any part of your duties to observe ice? A. No.

3755

Q. How do you remember it? A. I remember it because the day of this accident I could remember very well I did see ice floating down the river.

Q. You thought of it at that time when the accident occurred because it was generally presumed the boat had struck ice on that day of the accident? A. Yes, sir.

Q. Was the question of this boat running in the ice discussed there? A. You would hear rumors of all kinds from the men, that the company had the boat out at that time of the year.

3756

Mr. Englar: I move to strike it out.

The Court: Strike it out.

Q. How about other years, do you remember whether the boat was run other winters when they had ice in the river? A. Other years when the ice was starting to form pretty heavy and it was dangerous for the "Linseed King" to be crossing back and forth, they would generally pull that up on the slip there, and it was done for the winter.

Q. She was then running other years when there was some ice in the river—— 3757

Mr. Englar: I do not think he should lead the witness. I object.

The Court: Sustained.

Q. How much ice was there in the river the year before when they laid her up? A. There was not quite as much as there was on the day that the "Linseed King" sank, not that much ice in the river.

Q. How long before she was laid up in 1925 was there ice in the river? A. I would say about a month anyway. 3758

Q. She was run for a month while there was some ice in the river in 1925? A. Yes, sir.

Q. Were you there in 1924? A. That I cannot remember. I might have been and might have not.

Q. Is that all you know about this case? A. That is all I know.

Mr. Axtell: You may examine.

Mr. Englar: Mr. Axtell, is this the man you suggested as an interpreter a little while ago? 3759

Mr. Axtell: No. I think he speaks Italian, though.

Mr. Englar: I thought he was.

Mr. Axtell: Do you speak Italian?

The Witness: A little, not much.

The Court: You speak good English.

The Witness: Yes.

The Court: You were born here?

The Witness: Yes.

3760 Cross examination by Mr. Englar:

Q. How long did you work at Spencer Kellogg, when was the first time you came to work there? A. I do not quite remember the first time I did come to work there, whether it was 1922 or 1923 or 1924.

Q. You think it was not later than 1924? A. That I could not say sure; my time cards show.

Q. It might have been 1925? A. If I was working there three or four years it would not be 1925.

3761 Q. Were you working there steady? A. No, sir; on and off.

Q. In the winter of 1925 and 1926 were you working there all winter? A. That I do not recollect, whether I worked all winter in 1925 and all winter in 1926.

Q. Can you tell us whether you worked at the plant in December, 1925, and January, 1926? A. I did work in 1926; that was not in the plant, on the dock, but outside at the gate as a watchman.

Q. Tell us about those two months, December, 1925, and January, 1926, were you working at
3762 the plant then? A. The year 1926 and January —whether I got the watchman job there that month, I am not sure.

Q. It might have been February? A. It might have been February I know. I put in six or seven months at the watchman's job.

Q. In 1926? A. Yes, sir.

Q. But you cannot say for sure you were working there either in December, 1925, or January, 1926? A. December what, I beg your pardon?

Q. You are not positive you worked at the

plant either in December, 1925, or January, 1926, 3763
are you? A. I am positive I was working in the plant from January on; whether at the watchman's job or on the dock, I do not know, but I was working there in 1926, January.

Q. The whole of the month of January? A. I had the watchman's job seven months. Whether it took effect from January, I do not remember for sure.

Q. Are you sure you were working at the plant at all in January, 1926? A. I am positive—not at the plant. I was under the company's payroll, whether outside at the watchman's gate or on the dock, I do not remember. 3764

Q. How much of 1925 do you know you were on the company's payroll? A. 1925?

Q. Yes. A. Not to say too much, say six months.

Q. Was that the last half of 1925 you were there? A. I don't remember whether it was the last half or the first half.

Q. There was a period in between when you were not in the employ of the company, was there? A. There might have been.

Q. And you are not sure whether you worked there in December, 1925? A. I worked there in 3765
1925, but what months, I do not know whether it was December, the first half or the second half.

Q. About January and February, 1926, are you positive you worked there those two months? A. January and February, 1926, you said?

Q. Yes. A. Yes.

Q. Both months? A. Yes, sir.

Q. All of those two months? A. Yes, sir, and I put in seven months. That was from either January or February until here last August.

3766 Q. Then you are not sure whether you started in January or February? A. Not them two months, no, sir, but I know it was in the year 1926.

Q. I understand you only rode on this boat twice in your life? A. Yes, sir.

Q. And you cannot give us any idea when that was? A. No, I cannot give it to you. If I could remember I would tell you.

Q. You say that this pump that she was pumped out with, that that stayed there on the dock all the time? A. It was there until about two weeks
3767 after the accident, when it was removed, that I know of.

Q. For how long before the accident was it continuously on the dock? A. As far as I can remember, just two weeks before the accident.

Q. You do not remember it before that? A. I never bothered to look there.

Q. But you are sure it was on there continuously for two weeks before the accident? A. Yes, sir.

Q. What did it look like? A. It is one of these pumps about that big in length.

3768 Mr. Axtell: Indicating 2 feet.

A. (Continuing.) And about that high in height.

Mr. Axtell: Indicating 15 inches.

A. (Continuing.) With a slide that goes back and forth, two slides, it had two cylinders; I do not know much about a pump.

Q. You think it was a steam pump? A. It was a steam pump.

Q. And during these two weeks you saw them using it to pump out the "Linseed King"? A. During these two weeks I saw them, not every day, every now and then I would see that pump in use. If I seen it maybe two or three times in use, that was plenty. 3769

Q. At any time, whether it was in use or not, it stayed there all the time? A. Two weeks after the sinking of the "Linseed King" the pump was taken away from there.

Q. For a period of a month, from two weeks before the accident to two weeks after the accident, the pump was there all the time? A. Two weeks before the accident and two weeks after the accident; the pump was taken away, otherwise it would have been there. 3770

Q. During those four weeks it was on the dock all the time? A. Yes.

By the Court:

Q. Do you mean you saw it used during the first two weeks you mentioned—did you see the pump used? A. In the first two weeks it was used once, twice or three times after I seen it.

Q. Were you right there at the dock? A. Yes, sir. 3771

Q. Who was using it? A. I do not know who used it; it was turned on, and it was working by itself. They turned it on and it pumped the water out. How long it took to pump it out I cannot remember.

Q. Can't you tell who was on the dock and who was using the pump? A. That I cannot tell. I was hired as a laborer, and just noticed that.

3772 By Mr. Englar:

Q. During this period, two weeks before the accident and two weeks after the accident, what sort of work were you doing? A. That is hard to say; on Spencer Kellogg's dock.

The Court: Just a minute. Read the question.

(Question repeated by the stenographer.)

The Court: You can answer that very simply, can't you?

A. It was doing laborer's work.

3773 Q. On the dock? A. I beg your pardon, two weeks did you say before?

Q. Yes. A. And two weeks after the sinking of the "Linseed King"?

Q. Yes. A. That still would be in December?

Q. Yes, part of it. A. Yes, sir, as a laborer.

Q. Working on the dock? A. Yes, sir, your Honor.

Q. Can you give us any idea what sort of work you did; what did you do with your hands? A. Worked the same as the rest of them.

Q. At what? A. If there was a seed ship in
3774 I would be down in charge of the hatch with the men getting the bags up, shoveling seed, and if on the dock, I would be loading 100-pound bags, get somebody to put them on your back, and place them on the pile, work of that sort.

Q. When did you get this job as watchman? A. I believe I got it in the month of January or February, I am not sure.

Q. 1927? A. 1926.

Q. That was before this accident? A. No, sir, after the accident.

Q. That would be January, 1927? A. 1927; 3775
1926 or 1927, I am not sure.

Q. Where were you stationed when you had the watchman's job? A. Outside the gate, the time office.

Q. Didn't you have to make certain rounds? A. Yes, sir.

Q. Punch certain clocks? A. Yes, sir.

Q. How did you come to leave the plant? A. The company caught me doing wrong, and I admitted I was doing wrong, and I was discharged.

Q. Since this accident, and since you left the 3776
employ of the company, have you talked to Mr. McHale, the dock superintendent? A. Not that I know of.

Q. You never had any conversation with him about this case? A. No, sir.

Q. Didn't you tell him that you would testify for Spencer Kellogg, that you were going to be on the side where the most was in it? A. I never said nothing of the kind.

Mr. Englar: I shant be much longer, but I want to get a little information from the spectators. 3777

That is all.

GEORGE G. GARBER, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. What is your occupation? A. I am an investigator.

3778 Q. For what company? A. The Security Mutual Casualty Company.

Q. Did you go to the plant of Spencer Kellogg Sons and get from them a list of employees that they had residing in New York as of the date of December 20, 1926?

Mr. Englar: That is objected to, your Honor?

The Court: What is the purpose, Mr. Axtell?

Mr. Axtell: I asked them to produce that list in the beginning of the trial. They

3779 said they did not have such a list and did not know of it. This is the man who prepared the list and he turned it over to counsel a few minutes ago, or the cards.

Mr. Englar: The point is, this gentleman went to the plant of Spencer Kellogg & Sons and made some data which he brought to court and just handed that to us. It is not something in our files, but something he copied out of the files of Spencer Kellogg & Sons.

The Court: It relates to what?

3780 Mr. Axtell: It shows how many people they had residing on the New York side working in their plant and has a bearing on the adequacy of this boat to do the task to which he was assigned at the time of the accident.

The Court: Inasmuch as there is testimony some of the men went over by way of the launch and others went by ferries, I do not see how I can draw any deductions.

Mr. Axtell: There is a question of dis- 3781
pute still as to how many people were on the boat, and this list was prepared, we understand, at the time and showed one hundred and some-odd men, 135 or 145 living on this side that crossed regularly on this boat, and a list was prepared for some purpose, I do not know why it was prepared, it is none of my affair, I am not concerned with that, but I want the list and I have taken the only means of getting it here. He has brought it here.

Mr. Jayne: Some 27 people are miss- 3782
ing, whose bodies were never found, and one part of the proof as to those men whose bodies were never found is that they worked in the plant.

The Court: Do you intend to furnish information requested, Mr. Englar?

Mr. Englar: Yes, we intend to furnish full information as to who worked in our plant, but I do not see how information that this man compiled from our files can possibly be produced here as having any probative force whatever. This man had access to the files and made copies of cer- 3783
tain things.

Mr. Axtell: Do you say those files are not here now? We subpoenaed them and made an effort to produce them. They have been promised, and now we have secondary evidence.

The Court: When will these files be here?

Mr. Englar: I have stated repeatedly that they will be here tomorrow, that is, the payrolls.

3784 Mr. Axtell: Let me get a little more on the record and I will withdraw this question.

Q. Did you come here pursuant to subpoena? A. Yes, sir.

Q. Have you got it with you? A. Yes, sir.

Q. Will you let us see it?

(Witness produces same.)

Q. Have you brought the documents recited in the subpoena with you, yes or no?

3785 Mr. Englar: Will you tell us what the documents are? Can we have it in the record?

Q. "All time cards and list of time cards pertaining to employees of Spencer Kellogg & Sons, Inc. who are alleged to have been on the "Linseed King" on December 20, 1926, totaling about 140." A. I brought all time cards of men employed by Spencer Kellogg & Company on December 18, 1926. That is, they were all live cards as to employment at that time.

Q. Were those original records? A. Original

3786 records.

Q. From their file from their plant, their records? A. I believe they are.

Q. They gave you these cards? A. No, they did not give them to me. I got them at my office.

Q. Were they made out by them? A. They appear to be.

Q. Documents furnished your company by this company? A. That is not knowledge of mine. I am informed that they were.

Mr. Axtell: I want them produced. 3787

The Court: Inasmuch as the other side say they intend to comply with the subpoena to produce them, hadn't we better wait?

Mr. Englar: (Speaking to somebody at his table.) Are those original records?

Gentleman at Mr. Englar's Table: No.

Mr. Axtell: Let us look at them, please.

Mr. Englar: If the Court says so. There is no proof they are anything yet.

Mr. Axtell: I ask they be marked for identification right now as they are, 3788 bunched up.

The Court: Let me see if I understand you correctly. You want these cards——

Mr. Axtell: Marked for identification. That is all I ask now. I ask they be marked for identification and kept here, or available to counsel on either side, and that the Court deem them admissible in evidence later on, or have access to them.

Mr. Englar: There is no objection to their being marked for identification.

(Marked Claimants' Exhibit KK for 3789 Identification.)

Cross examination by Mr. Englar:

Q. Did you get the cards from the files of Spencer Kellogg Company? A. No, sir.

Q. Were you present when they were gotten? A. No.

Q. Do you know anything about that except you got them in your office? A. No, sir.

3790 Re-direct examination by Mr. Jayne:

Q. Where did you get the cards from? A. From the office of the Security Mutual Casualty Company.

Q. Where did they come from to get there, do you know? A. I do not know.

Q. Did you examine the cards? A. Yes, I looked at them.

Q. For what purpose?

Mr. Englar: Objected to, your Honor.

The Court: Sustained.

3791

Q. Did you make any examination of these cards?

Mr. Axtell: I would like to know why these cards are turned over to the employees of the petitioner. I understood those cards were to stay here in the court room.

Mr. Englar: They will stay here.

Q. Did you examine those cards in connection with your duties with this insurance company?

3792 A. No, sir, I did not. I made a superficial, I took a superficial look at those cards, could not do otherwise because there were so many of them, in obedience to the subpoena, just before I came up to the Court here.

Q. In whose possession in your office were these cards? A. Why, I suppose they were in the possession of Mr. J. S. Marks.

Q. Who is Mr. J. S. Marks? A. He is the manager of the office.

Q. You say you suppose so; what do you mean by your supposition? On what does your suppo-

sition rest? A. I suppose all records and documents in the office are in his custody, because—— 3793

Q. Because he is the head of the office? A. Yes.

Q. Whose desk were they on? A. They were on the desk of Mr. Hageman when I saw them, and one of the clerks gave them to me.

Q. Who is Mr. Hageman? A. He is one of the claim men down there.

Q. What is he, a sort of adjuster or a man that writes insurance, or what? A. He is an investigator and adjuster, a claim man, a claim agent.

Q. You do not know how they came there or what he was doing with them, or anything like that? A. I think they were either there or one of the girl clerks was bringing them over there, laying them there when I first saw them. 3794

The Court: The purpose of all this is to show or attempt to show that these people were insured. I do not think it is necessary to proceed with this.

Mr. Jayne: It is not to show they were assured, merely to show they existed as employees.

The Court: I do not think that it is necessary to inquire into how these cards were obtained. Inasmuch as the other side has produced the cards in obedience to a subpoena duces tecum, I think we will suspend this examination now. 3795

By Mr. Axtell:

Q. Did you go over to the plant yourself? A. Yes, sir.

3796 Q. Did you need the cooperation of the manager for the purpose of getting these cards? A. No, I never got those cards there.

Q. Were they sent over afterwards? A. I do not know how they got there; somebody else must have sent them over.

Q. They were not printed by your firm? A. No, we do not print anything.

Q. You have not any such forms as that in your office, have you? A. No, sir. If I were to attempt to say what those cards are from what they look on the surface, it would be a mere
3797 guess; you can tell as well as I can.

Mr. Axtell: That is all.

(Witness excused.)

JOHN F. AMTER, called as a witness on behalf of the claimants, having been duly sworn, testified as follows:

Direct examination by Mr. Axtell:

3798 Q. Where do you work? A. Down in the United States Aluminum Company.

Q. Where is that plant? A. Edgewater.

Q. You live where? A. Cliffside.

Q. How long have you lived in Cliffside? A. I have lived in Cliffside the last 24 years, or 25.

Q. Can you see the water from your house? A. Yes, you can see the river.

Q. Did you at one time work for Spencer Kellogg & Sons? A. Yes, I have worked for Spencer Kellogg & Sons three or four different times.

Q. What kind of work? A. Machinist and 3799
master mechanic.

Q. Were you working there on the day of this accident to the "Linseed King"? A. No, sir.

Q. Do you remember anything about this accident? A. I remember——

Q. Yes or no? A. Yes.

Q. How long before that was it you had worked for them? A. Kelloggs?

Q. Yes. A. I was out of Kellogg's say a year and a half before the accident.

Q. I see. Was your attention attracted to this accident on the day that it occurred? A. Yes, 3800
sir.

Q. Did you hear or see anything? A. Yes, when a fellow passed——

Q. Please answer the question yes or no. A. Yes, a fellow spoke to me about it.

Q. Did you hear any sounds from the river, or anything like that? A. Oh, no, no, no.

Q. Were you down at the river on that day? A. I was down at the river after I heard about the accident.

Q. Where were you working in December, 1926? A. 1926, down at the Aluminum plant.

Q. The same place you are working now? 3801
A. Yes.

Q. How long had you worked there before that? A. Before the accident?

Q. Yes. A. Practically a year and a half.

Q. When you go down to the plant to work from your house, from where you live, how do you go? A. Go over to the cliff——

Q. Do you walk? A. Walk, walk along the cliff until I get over to what we call Oakdean Avenue.

3802 Q. Do you have a view of the river? A. I walk along——

Q. Yes or no? A. I walk along the river then.

Q. Do you have a view of the river? A. Yes.

Q. Do you have any recollection or knowledge as to whether there was ice in the Hudson River on the 20th, the day of the accident? A. Plenty of it.

Q. Did you at that time have any recollection as to whether there had been any ice in the Hudson River observable from the river bank on any day before that in December? A. Yes, a
3803 few days before that accident I seen ice floating down the river.

Q. How can you be certain of that? A. Because after the day of the accident we got to talking about it in the shop, it naturally put us in mind there was ice coming down before that, and I thought it was funny that Kellogg's boat was running during the ice, which I had never known before.

The Court: You may strike out what he thought was funny.

Mr. Englar: Yes, your Honor, I would
3804 like to have that stricken out.

The Court: This was on the New Jersey side, wasn't it?

Q. Is that all you know about this case? A. That is about——

Q. Of your own personal knowledge? A. Yes.

Mr. Axtell: All right, your witness.

Cross examination by Mr. Englar:

Q. How far is your house from the border of the river? A. What?

Q. How far is your house from the edge of the river? A. I guess if we had to walk it it would be probably three-quarters of a mile. 3805

Q. How long would it be if you rode it? Do you mean that is in a direct line? A. That is the way you have got to walk it. If I could come straight down the cliff, it would be a quarter of a mile, but the way we have to come down walking, it is about three-quarters of a mile.

Q. You mean in a direct line it would be a quarter of a mile? A. If I could walk straight down it would probably be a quarter of a mile, maybe not even that.

Q. The edge of the river at your place is a high cliff, is it? A. Yes, sir. 3806

Q. And if you stand at your house and look towards the river, what do you see? A. What do I see?

Q. Yes. A. I can see probably one-third of the New York side of the river. I cannot see the Jersey side, I can see on the New York side of the river.

Q. And going down to the place where you work do you get any nearer to the river? A. Yes, sir, I get nearer to the river, I am working right alongside of the river. 3807

Q. And that is at what point on the river? A. On what point?

Q. Yes, where is the Aluminum Company's plant on the river? A. In Edgewater.

Q. In Edgewater? A. Yes, sir.

Q. And the place where you work, can you see the river from there? A. Yes, sir.

Q. From the place where you work? A. From the shop, if you look out the window you can see the Hudson River.

3808 Q. The windows face right out toward New York? A. There is windows facing on the four sides of the building.

Q. Toward the river? A. Yes, sir.

Q. And do you ordinarily make a note if you see ice in the river? A. What is that?

Q. I say, if you see ice in the river do you ordinarily make a note of that, either mentally or in writing or any other way? A. No, I have nothing to do with ice.

Q. What? A. I say I do not keep track of ice.

Q. The ice does not concern you ordinarily? A. No, not a bit.

3809 Q. And the only reason you happen to remember there was ice just before this accident was because of some talk you had on the day of the accident, is that right? A. Yes, that put me in mind of the ice, otherwise I would never pay any attention to the ice in the river if it was not for the accident.

Q. And as a matter of fact, on these days prior to the accident you had not paid any attention to it, had you? A. What is that?

Q. I say, on these days prior to the accident you had not paid any attention to the ice? A.

3810 No, because the accident put me in mind I had seen ice floating down the river before the accident.

Q. Did you attend any of these meetings at George Caracas' store? A. I do not know nothing about the meetings.

By the Court:

Q. On what side of the river was that floating down? A. It looked more to me, it was more coming down on the Jersey side, like pieces of

ice, not great big cakes of ice, not that I can see; 3811
not much to stop any traffic or anything, but it was pieces of ice floating down, I know, a few days previous to the accident.

By Mr. Englar:

Q. Have not you ever been at George Caracas' store since the accident? A. Oh, yes.

Q. Did you see any of the former employees of Spencer Kellogg & Sons there? A. I was there I think it was Sunday before Christmas. George Caracas sent word up to the house, that "if you like to see Mr. Medlicot, he is going to be 3812
at my store Sunday, if you like to see him, be down at the store". I says, "If I have time I will stop down on the way to the cemetery, I will stop in to see him."

Q. Who else was there that you knew? A. Mr. Medlicot and George Caracas, and there was fellows there from Kellogg's, but I do not know who they were; I do not know their names.

Q. Was Mr. Axtell there? A. No, I didn't see him.

Q. You worked at the plant of Spencer Kellogg & Sons under Mr. Medlicot, didn't you? A. Yes, sir. 3813

Q. And did you occupy the place that Mr. Johannis has now? A. Before Mr. Johannis had it I had that place, yes, sir.

Q. How did you come to leave? A. Well, this is how I come to leave. I had a boy 18 years old who was serving his time over here at the Vulcan Iron Works in Jersey City, and he took sick, got pneumonia, and he was up and around for about two weeks, and then they sent for me, and he had trouble in his hip——

3814 Q. Never mind that. A. You want to know why I give it up; I will tell you.

Q. I will withdraw the question; I do not want to go into your personal affairs. A. The simple reason was when I lost my boy I did not feel I could take care of the job with all of the trouble that I had.

Q. Then you resigned the position? A. I resigned the position of master mechanic; I resigned that job, yes, sir.

Q. Did you ever work there again? A. I was out three weeks, and I went back as machinist.

3815 Q. How long did you work at that? A. Why, I worked there then from—I should say a year and a half, after I gave up the master mechanic's job I worked there practically a year and a half as machinist for Mr. Stover and Mr. Johannis.

Q. How did you come to sever your connection with the concern at that time? A. What is that?

Q. How did you come to leave that time? A. That is something I was not told. I was simply notified half an hour before quitting time that I was through, I was done, and nobody told me, didn't bother me anyway, simply told me that I was through, and that is all there was to it.

3816

Mr. Englar: That is all.

(Witness excused.)

FREDERICK LUDWIG, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. Are you a survivor of the "Linseed King"? A. Yes, sir.

Q. How old are you? A. 44. 3817

Q. Where were you born? A. In Germany.

Q. Are you married or single? A. Married.

Q. Are you a citizen? A. Yes, sir.

Q. Had you ever ridden on the "Linseed King" before the day of the accident? A. Yes, sir.

Q. How many times? A. Twice.

Q. What days were those? A. Saturday and Sunday.

Q. How far out in the river had she gone when she filled with water, do you know? A. I should judge pretty near half way.

Q. How far in the river had she gone when she 3818
first struck something? A. Pretty near half way.

Q. How far did she go after she first struck something? A. Well, say some seconds.

Q. You think she was on the New York side of the river? A. Well, that I could not possibly say.

Q. How far from the New York side would she be? A. She was about midstream, I would say.

Q. Will you tell the Court in your own way what happened at the time of this accident? A. Yes, sir, I got to the pier at 6:15 Monday morning, December 20th. I seen two groups of men there, I estimated about 100 men in these two groups, 3819
and I happened to speak to one white fellow; I said, "There is quite a crowd here," and he said, "Yes"——.

Q. Leave out the conversation, just say what you did. A. So we waited there for the boat to come in. While we were there, about half past six, the boat was there I should judge about half past six. We got aboard the boat, and when I got aboard of her, why, she was pretty well filled up then with men, and by the time she

3820 left the pier there was no standing room in her.

Q. How did you get on? A. The seats was all occupied, and there was probably between 45 and 50 men standing up in the cabin.

Q. Where were you? A. About 4 or 5 feet away from the pilothouse door on the right hand side.

Q. What happened when she hit? Tell us what you heard or saw or felt. A. Why, she was running along, and the first thing I know the boat trembled with the impact, and she careened
3821 to one side.

Q. Which way did she careen, to the right side? A. Yes. I was standing there and I thought that she would turn over. She careened over to the side that I was standing on. Some seconds later she struck again.

Q. Did you hear any noise? A. There was a trembling, yes, sir.

Q. Is a tremble a noise? A. I know she struck something solid.

Q. Did you hear any noise, the impact of a blow? A. The boat trembled, the boat shook.

Q. You mean you felt her shaking? A. I felt
3822 the boat shaking.

Q. From striking something? A. From striking something, yes, sir.

Q. Did you hear any cracking of boards or wood or anything like that? A. I could not say that, but I know I was pressed up against the side of the cabin when she careened.

Q. Pressed by what? A. By the boat careening over.

Q. Who pressed you? A. The impact, whatever she struck.

Q. She struck hard enough? A. To roll the 3823
boat over.

Q. It knocked you up against the side of the boat? A. Yes, sir.

Q. Was anybody sitting down near you? A. Yes, sir; the seats was all occupied. I had my knees up against the man that was sitting down there, my legs.

Q. You were facing the side of the boat? A. I was facing the side of the boat.

Q. On the right hand or left hand side? A. Right side.

Q. I suppose you mean right side when you are 3824
facing the forward part of the boat? A. I was on the starboard side of the boat.

Q. You know starboard from port? A. Yes, sir.

Q. Tell what happened after you felt this impact. A. Why, there was wild confusion aboard, they was all mauling one another trying to get up to the pilothouse door to get out. By the time I got there——

Q. Did you feel any water? A. By the time I got there the deck was awash, when I got to the door.

Q. Had other people gotten out ahead of you? 3825
A. Oh, yes, other people had gotten out that door.

Q. They went out that door? A. They went out that door.

Q. Was the upper part of the boat in the water? A. The deck was awash, the water was coming in.

Q. The water was coming in the door? A. The water was coming in the door when I got there.

Q. It was pouring in through those doors? A. Yes, sir.

3826 Q. In other words, you had to fight the water as well as everything else? A. Yes, I had quite a job to get out.

Q. What about the other men inside? A. That I do not know. I got out in the water and swam around, and the first thing you know I grabbed a cake of ice and I held on there for a while. Then I turned around again, and what appeared to me was the top of the pilothouse, where they hang the lights, I seen this bracket sticking out like everything else, and I swam for it.

3827 Q. Yes, all right. A. While I swam for it there was a colored man swimming for it at the same time, and he grabbed my coat. I got up to that bracket on top of the pilothouse roof, but he lost his hold and sunk; I never seen him again.

Q. Do you know his name? A. I do not know his name, no, sir.

Q. Did you see any other men around there in the water? A. Yes, sir.

Q. How many? A. When I got there I got my leg between the windows in back of the pilothouse, I got my left leg in there and held on that way,
3828 so that every time the boat took a roll I was thrown to one side or the other, and that was the only way I could keep my balance, by having my leg in that window. Only for that I would not be here today. But I took a view around there, and we were in a regular field of ice. There was cakes there from 6 to 8 feet in diameter with men on them, lying on them and standing on them. In particular, I noticed one young white fellow, he was on a cake when I noticed him, and a

moment later he had disappeared, he sank out of 3829
sight when the cake of ice rolled over.

Q. You do not know his name? A. I do not know his name, no, sir. He sank out of sight; and there was another fellow that swam for the boat, he had a scar on his face. I noticed him over at the plant when I was there on Saturday morning. He made for the boat and never got there; he sank.

Q. How many did you see go down? A. I seen three men go down.

Q. Did they say anything to you before they went down? A. No, didn't say nothing; the 3830
only thing you could hear was "Help, help, help." That was all you could hear.

Q. They were full of water then? A. I suppose so; I do not know.

Q. The sound you made sounds like the noise a man would make when he is full of water. A. They hollered, "Help, help, help." That is all I could hear. They were calling for help around there.

Q. How many were there out floating around that did not go down that you saw, do you know? A. Why, there was, I could not give you the exact number, I never counted them, but there might 3831
have been around 35 or 40 men scattered around here.

Q. There were 28 survivors picked up and carried in, we are informed reliably. How many men more than that were there there, in your estimate? A. There were four men on top of the pilothouse roof with me. In the stern of the boat there was a pipe, an extension of the stairway running up above the deck, and there was men hanging on that; there was probably a half

3832 a dozen men hanging on that, holding on to this pipe railing.

Q. How many of them stayed on there, all of them? A. That I could not say. I know the four up with me stayed there until the towboat "Buffalo" came out and picked us up.

Q. How many men were hanging to the wreck of the boat at the end? A. Well, probably—I could not say the number. I figure about 5 or 6 anyway. I figure that 5 or 6 men were on the rear end. I could not say the exact amount.

Q. How many men up where you were? A.
3833 Four men up where I was.

Q. And how many men on the rear? A. Five or six men.

Q. That would be eleven? A. About that; 10 or 11 men.

Q. There were 10 or 11 men hanging to the boat? A. Yes, sir.

Q. Did any of those hanging on the boat fall off before that? A. That I could not say. I know there was none fall off where I was. I did not happen to look back all the time; I had to steady myself. It was only once in a while that I took time to glance back.

3834 Q. Was there any extra room in that boat when you left the dock? A. When we left, no, sir; I do not think so. It was about filled. The men were jammed in there pretty tight, so I could not turn my body around.

Q. Did you know there were life preservers in there? A. Well, I did not know; I supposed they were overhead.

Q. But you did not notice them particularly? A. I did not notice them, no, sir; I did not notice life preservers.

Q. Could you have gotten one out if you had noticed them? A. No, sir; I did not have time to get one out. I did not have time to put it around me if I had gotten it out. 3835

Q. How long was it from the time you struck until the boat was full of water? A. Why, it was probably 30 seconds or so.

Q. Did any water come in from the first blow? A. There must have been water come in, but like everything else, I could not see it; there were so many men in there ahead of me I could not see it.

Q. Did you feel any? A. I felt some. My feet were getting wet. 3836

Q. Do you know whether you felt any water upon your feet between the two blows? A. I felt a little water making my feet wet, yes.

Q. Did you cross on that boat on Saturday and Sunday, did you tell me? A. Yes, sir.

Q. Was any ice in the river those days? A. Yes, sir.

Q. Are you sure of that? A. I am sure of that.

Q. Did they have a big crowd like that on those days? A. The crowd was not quite as large on Sunday as on Monday.

Q. Were they unloading a ship or something on Sunday? A. No; this Mr. McHale, he told me—— 3837

Q. That is him there? A. That is the gentleman, right there (indicating). I went up as spokesman for the rest of the men when we got over there Sunday morning, and the boats had not arrived. We saw the timekeeper in the office, and he told us to go down to see Mr. McHale. I happened to be one of the men that he told, and I goes down and sees Mr. McHale. He said,

3838 "You boys be at the 95th Street pier at 6:30 Monday morning."

Q. When did he tell you that? A. He told me that Sunday morning at 9 o'clock. We waited there, the boat had not arrived then, and that was about 9 o'clock, I should judge, Sunday morning.

Q. How many of you were there over there on Sunday morning when he told you that? A. How many? I could not tell you the number. There was quite a crowd. I did not count them, but I know the office was packed and there were some outside.

3839 Q. Were there as many as in this court room? A. Oh, there was more than that.

Q. Were there 50 or more? A. Oh, I would say more than that.

Q. More than there are people in this court room, including the Court and the stenographer, and everybody? A. There was more than that.

Q. We have got 42 here, is that right? A. I did not count them, but I know there was more than that, for the office was filled and outside was filled.

Q. There are 42 in this room. Was there more than that in the office that morning? A.

3840 The office was filled and there were a lot of men outside.

Q. How many more than 40, or more than there are in this room, were there in the office of Spencer Kellogg when Mr. McHale told you to come back on Monday morning? A. You see, the men were not all in the office. You could only get a few men in the office, but they were standing around outside, around the office.

Q. How many outside? A. There were quite a few outside.

Q. See if you cannot estimate how many there were? Were there twice as many, three times as many, as there are in this court room? A. They were standing around out there; some were down on the pier and some up at the office. 3841

Q. How many men do you estimate were over there to unload this ship that did not come in on Sunday? A. How many men?

Q. Yes. A. I figure there was at least 75 or 80 men there.

Q. Those men were going to unload the ship that did not get there? A. Yes, sir.

Q. They were engaged the day before? A. They were engaged the day before. 3842

Q. To work as longshoremen? A. To work as longshoremen.

Q. At so much per hour? A. At 48 cents per hour.

Q. They got paid for the number of hours that they worked, did they? A. I did not get paid at all.

Q. You were to go to work? A. Yes, sir, Sunday morning.

Q. Were you given a check? A. I was given a pasteboard card with a number on it.

Q. And you were told the boat would be in next morning, Monday morning? A. At 6:30. 3843

Q. You were to be there? A. At the pier at 95th Street.

Q. Did you see some of these men, or any of them, that had been there the day before on the pier at 95th Street, Monday morning? A. There wasn't no one here that I seen.

Q. Were there some that went down that Monday morning that you had seen over there? A. There isn't one here that I could recognize.

3844 Q. You would not remember it? A. No, because it was dark.

Q. You say it was dark the next morning when you went down there? A. It was dark on Monday morning, yes, sir.

Q. And you could not tell? A. No, sir.

Q. Were there any lights in the boat? A. There was two lights in the boat, yes, sir.

Q. Could you see by those lights? A. Well, you could just about barely see, barely.

Q. Do you know whether the men that were there Sunday morning at the plant came back on
3845 the dock at 95th Street Monday morning as they were invited to? A. Yes, I know some of them; a Mr. Hicks was one of them, for he had spoken to me at the office.

Q. Do you know there were any new men that had come in answer to the advertisement in the paper? A. Well, that I could not say; I could not say.

Q. Did the captain have anybody to help him run the boat that morning? A. No, I did not see nobody there, that I knew of, to help him.

Q. Were any questions asked of anybody, whether they had a right to ride, or anything like
3846 that? A. No, sir, I didn't hear nothing.

Q. Do you know whether there were some men riding on the outside, on the deck? A. There might have been.

Q. You do not know? A. I do not know; I could not say.

Cross examination by Mr. Englar:

Q. Did all of the men that were in this crowd on Sunday morning get one of these cards to come back the next day? A. On Saturday morning?

Q. On Sunday morning? A. Did they all have 3847
a card?

Q. They all get a card which was a permit for them to come back Monday morning, such as the card that you got? A. Yes, they went in the office and came back with a card that they gave them. They gave their pedigree there.

Q. The question is whether all of these men that you say were over there Sunday morning in the office and scattered around on the dock and other places, whether they all got a card like you did? A. Well, when I went into the office, that gave the next man a chance to get in behind me, and 3848
when I went out some more would come in, and I did not stay there to watch them.

Q. You do not know whether they all got these cards or not? A. I do not know, no.

Q. Did you run into any ice on Saturday or Sunday when you crossed? A. We did not run into ice, but I seen ice in the river.

Q. Where was it? A. Where was it?

Q. Yes. A. Well, I will tell you where it was. I happened to look out the door to find out how near the shore we were, and I happened to see the boat about midstream, and there was floating ice there, that is how I came to notice it. 3849

Q. Was that on Saturday or Sunday? A. That was on Sunday.

Q. Where did you see the ice on Saturday? A. Near the New York shore, as the boat was nearing the New York side.

Q. On Saturday the ice was in close to the shore, is that it? A. Yes, sir.

Q. Are you sure about the time that you were told to be at this pier Monday morning? A. Yes, sir, positive.

3850 Q. You never had worked at this plant before? A. No, sir.

Q. You were hired as a laborer? A. Yes, sir.

Q. Prior to this first blow or trembling that you speak of had you noticed anything out of the ordinary? A. Yes, I heard the ice banging up against the hull of the boat as she was running along.

Q. And then you felt this trembling that you speak of? A. Yes, sir.

Q. And then somewhat later you felt this heavy blow? A. The impact threw the boat over to one
3851 side.

Q. So your impression was she had hit something very hard? A. She hit something.

Q. Very hard? A. She must have hit it when she rolled over on the side, and I was squeezed against the cabin wall with the weight of the men on me.

Q. About what angle did she heel over when she struck this heavy blow? A. To about what angle?

Q. Yes. A. It is pretty hard to tell you, but I know I was forced up against the wall.

Q. Can you give us an idea, take any horizontal
3852 object like this pad? A. Did you ever ride on a train going around a curve?

Q. Yes. A. It put me in mind of that.

Q. Like a train going around a curve? A. Yes, when you are thrown up on one side, that is what it put me in mind of.

Q. You could not give us any estimate of the angle? A. I could not give you no estimate of the angle, no, not that way.

Mr. Englar: That is all.

Re-direct examination by Mr. Axtell: 3853

Q. Mr. McHale told you to be over there, and all of the men; when he told you that, did he say anything about the boat would not run if there was ice in the river, or snow or rain, or anythink like that? A. No, sir, he did not say nothing to me.

Q. Did he say anything to anybody else? A. No, sir.

Q. About that? A. No, sir.

Mr. Axtell: That is all.

The Court: Is it necessary to have any 3854
more witnesses to relate the incidents following the impact?

Mr. Axtell: I do not know what they intend to put in. If they make an issue of the fact whether the boat hit ice or not, we would like an opportunity to put in the rest of the witnesses. We are calling these men to prove how many were in the boat. I will limit the questioning of these men as to who was in the boat. We have got to prove who were on the boat.

The Court: You want them to estimate 3855
the number?

Mr. Axtell: Yes.

The Court: I was just going to suggest that we omit some of these experiences, if you do not mind.

(Witness excused.)

CAESAR CARACAS, called as a witness on behalf
3856 of the claimants, being duly sworn, testified as follows, through Hipolito Riquelme, who was sworn as interpreter:

Direct examination by Mr. Axtell:

Q. You were on the "Linseed King" the day of the accident? A. Yes.

Q. How tall are you? A. 5 foot and 7 inches.

Q. How much do you weigh? A. 165 pounds.

Q. What were you doing? Were you going over there to work or something? A. I was working in the press room.

3857

Q. Do you still work there? A. Yes, sir.

Q. How much an hour do you get? A. I got 70 cents an hour before, and this time I get 65 cents an hour.

Q. Did you count the number of people on the boat that morning of the accident? A. No, sir.

Q. You did not count them? A. I did not.

Q. What part of the boat were you in? A. I was in the middle of the boat.

Q. In the cabin? A. In the cabin.

Q. Was the boat full or was there lots of room there? A. The boat was not quite filled.

3858 Q. What do you mean by "not quite filled"? A. There was space for more men.

Q. There was what? A. There was more space, more room in the boat for more men.

Q. How many more could they have gotten in there? A. I could not say; about ten.

Q. Were there any life preservers on that boat? A. There was plenty.

Q. Did you take one of those yourself? A. No, I had no time to get them out anyway.

Q. Why did not you take one with you? A. I do not need one of them. 3859

Q. How did you get out? A. I went through the window on the starboard side.

Q. You broke through the window? A. Yes, I broke one window in the middle of the boat and went through.

Q. Did you break it? A. I took out the window.

Q. How did you take it out? A. I pulled it out.

Q. Did you do it before the rest of the people got out? A. At the same time the people was running to the front, I had no time to go there.

Q. Did anybody else get through that window? 3860
A. I cannot see no more because the boat was filled with water.

Q. Were you standing up or sitting down on that ride over? A. I was standing up.

Q. How many more people were standing up in there? A. I cannot remember; about 20.

Q. Have you been talking to somebody else before you went on the stand here? A. I do not talk to nobody except the captain at the time.

Q. But since this accident have you been talking to anybody else about this case? A. I say I was talking to men who got saved that day; I 3861
talked to them that day.

Q. Have you talked to any of these lawyers, these men over at the other table, about this case? A. I was taken to Mr. Hagen.

Q. He is one of the lawyers over here? A. Yes.

Q. Did you sign a paper for him? A. I signed a statement of what I saw in the boat.

Mr. Axtell: Will you produce the statement?

3862

(Mr. Englar produces paper.)

Mr. Englar: I would like to have it noted that Mr. Axtell is examining the witness's statement.

The Court: And that you voluntarily submitted it to him?

Mr. Englar: No, he demanded it and I submitted it to him.

The Court: Well, you submitted it to him at his request.

Mr. Englar: At his request, yes, your Honor.

3863 Mr. Axtell: Who was the interpreter at the place when this was drawn up?

The Interpreter: I am.

Mr. Axtell: You?

The Interpreter: Yes.

Mr. Axtell: You are Caesar Caracas?

The Interpreter: Yes, sir.

Q. Where were you when this statement was drawn? A. In Wall Street, at the lawyer's office.

Q. Did you state at that time how many people were on the boat? A. Yes.

Q. Did you state at that time that you broke
3864 a window and got out through that way? A. Yes.

Q. Is it true that you broke a window, or is it true that you pulled the window out, as you said here a few moments ago? A. I got the window from the frame, and broke the glass and got through.

Mr. Englar: I think I understand what he has been trying to say. I think what he said was he broke the glass and then

pulled the frame out. Is not that what he said? 3865

The Interpreter: No; he got the window from the frame and threw it down.

Q. Did you say in this statement that you made at that time that there was plenty of room in the boat for more people? A. No.

Q. When did you get that idea that there was plenty of room in the boat? A. Will you ask me that question again?

Q. When did you first form the opinion that there was plenty of room in the boat? A. The day of the accident. 3866

Q. Did the lawyers ask you that question, if there was plenty of room? A. No.

Q. They did not ask you that question? A. No, sir.

Q. Did you say in that statement that every time the men got on the boat it was the same this morning the captain would tell the men to take it easy and go back into the boat? A. Yes.

Q. Then it was the same load every morning as you had this day? A. This was on a special day, before it was not so crowded.

Q. Did you say this: "The seats were all filled, and there were men standing in front of the motor, there were also men standing in back of the motor; I do not know how many men were standing; there were more men on this boat than we usually carried"? Did you make that statement? 3867

Mr. Englar: I think that statement is a little long.

A. Yes.

3868 Q. Did you say this: "On most Monday mornings we carried about 40 men. The captain told the men to take it easy, to get on slowly, and said, 'I will be back for another trip' "? A. Yes.

Q. And did you say this: "When I got on the boat I saw ice in the water around the dock; the ice was broken up"? A. Yes. I saw ice around the dock, and some pieces floating around.

Q. Did you say, "I could feel the ice striking against the boat. The first I suspected there was anything the matter was when someone said, 'There is water coming in the boat' "? Did you say that? A. Yes.

3869 Q. Did you say, "I was so far back in the boat that I could not see what the captain was doing, but I stayed where I was until the boat started to go down"? A. Yes.

By the Court:

Q. Was not there a door in the rear near where you were standing, by which you could have left the boat? A. There was a small door in the back of the boat, and two doors in the front.

Q. There were two doors in the front? A. Two

3870 doors in the front.

Q. One door in the back? A. One door in the back.

Q. Why did not you leave by the back door? A. Well, I took no chance because the back door was jammed with people, and I wanted to go through the window; I took no chances.

Q. There were a good many trying to go out that way? A. I cannot recall that.

Q. What is that? A. I cannot state that because I do not know.

Q. Did not you see any going out that way? A. No, I did not see them. 3871

Q. Did you see anybody trying to get out that way, the back door? A. I tried to save myself, and don't pay attention to the other people.

Q. Do you know how many men were seated? A. There were about 40 men seated.

Q. Did you count them? A. No; I know how many men were working regular.

Q. He would know that? A. Yes.

Q. What I wanted to know is whether he counted the men that were seated? A. Regularly about 40 or 50 men every day in the morning. 3872

Q. You did not count them on that morning? A. I did not count them, no, sir.

Q. What is your best estimate as to the number of men that were in the cabin? A. There was a lot of water in the cabin——

Q. How many were in the cabin? What is your judgment about those that were in the cabin sitting down and standing up? A. I was standing up.

By Mr. Axtell:

Q. How many people altogether? A. I would say there were 70 people, 60 or 70 men. 3873

By the Court:

Q. Were there any outside? A. There was no people outside; they do not allow them to use it out there.

By Mr. Axtell:

Q. You have not filed any claim in this case, have you? A. No, sir.

Mr. Axtell: That is all with this witness.

3874 By the Court:

Q. Did you see anybody trying to reach for any of the life preservers? A. There was nobody; they did not have time to get any life preservers.

Q. How soon did the water come in after you heard the blow, the impact? A. About two minutes after I heard the noise.

Q. The water came in about two minutes after you heard the blow? A. Yes.

Q. When the blow struck did it knock you over to the side of the cabin? A. Not at that time; that
3875 was about two minutes after the boat struck a piece of ice it started to turn.

Cross examination by Mr. Englar:

Q. The boat started to list about two minutes after she struck? A. Yes.

Q. After you got away from the dock did the captain of the boat say anything about whether he was going to make another trip? A. Oh, yes, the captain said he is going to make another trip, and the people that was standing on the dock could go on the other trip.

3876 Q. You say he told the people that were standing on the dock he was going to make another trip? A. Make another trip.

Q. Did he say anything about it after he left the dock and got out in the river? Did you hear him say anything more about whether he would make another trip? A. After that the captain say, "That wil lbe my last trip," because there was too much ice.

Mr. Axtell: That was when she was sinking, wasn't it?

The Witness: Before that. 3877

Mr. Englar: Your Honor, I just want to straighten out about this window. One of my associates speaks Spanish, and I do not think we have got the exact story about the window.

Q. Mr. Witness, what we want to know is did you take the window out of the sash, or did you just break the glass and go on through the sash?

Mr. Axtell: Let us get the window in here and he can explain it.

3878

A. I struck with my hand the window and broke the glass and pulled the frame out, and go through.

The Court: Did you see anybody else doing that or trying to do it?

The Witness: No.

Re-direct examination by Mr. Axtell:

Q. How did you get into this country? A. I come into this country in 1923.

Q. On what boat? A. The "Manaua", from 3879
Honduras.

Q. Did you pay your head tax? A. Yes, I paid everything.

Q. Have you got the receipt in your pocket? A. No, I have it in my home.

By the Court:

Q. Did I understand you were getting 60 cents an hour for working, or 70 cents? A. I get 65 cents an hour now.

3880 Q. But before the accident what were you getting? A. Before the accident I was getting 70 cents an hour.

By Mr. Axtell:

Q. You have got that head tax receipt home, have you? A. Yes, surely.

Q. Will you bring it down tomorrow?

The Court: You do not need to bother.

Mr. Axtell: I would like to see it.

The Court: Would you?

3881 Mr. Axtell: Yes.

Q. You broke the glass; was it this kind of a window fitted with a chain or was it fitted with buttons? A. No.

Q. Why did you not break the chain and open the window? A. I punched it with my fist and jumped out.

Q. Why did you break the glass when you easily could have pulled it in and broken the chain? A. I was in such a hurry, I have got no time to do it that way.

3882 Q. Was it a window with a chain like that, or was it one with buttons on the side? A. With the chain on the top.

Q. Would it not have been easier for you to have broken the chain that way and climbed over it? A. It was more easy to do the way I did.

Q. Is it not a fact the people were crowded in back of you so thickly there was no room to pull the window back, and the only way you could do it was to break it with your fist? A. It was more easy to go through the window than the door,

because there are so many people packed in around the door trying to get out. 3883

Q. Do you know any other men that were drowned on that boat, do you know the names of any of them? A. No, I cannot remember the name, but I know them.

Q. You cannot remember the names? A. No.

Mr. Axtell: That is all.

(Witness excused.)

HIPOLITO RIQUELME, called as a witness on behalf of the claimants, having been duly sworn, testified as follows: 3884

Direct examination by Mr. Axtell:

Q. How tall are you? A. 5 feet 9 inches.

Q. Where do you live? A. I live at 946 Bronx Park South.

Q. How tall are you? A. 5 feet 9 inches.

Q. How much do you weigh? A. 154 pounds.

Q. Had you worked for the Spencer Kellogg Company before this accident? A. I had been working for Spencer Kellogg Comnany since 1924. 3885

Q. Do you know how many people were on the boat that morning? A. I cannot say how many people were on there; I figured there was about 75 men or more.

Q. 75 or more? A. Yes; I cannot say exactly, because I do not count them.

Q. There might have been 85, or maybe 86 or 87? A. Maybe, but I do not count them; I did not pay particular attention to the people.

3886 Q. How did you get out? A. I get out through the starboard door, and I go through the windows in the pilothouse.

Q. The same one that the captain went through? A. No, the back window.

The Court: At the stern of the boat?

The Witness: In the back of the pilothouse.

Q. Back end of the boat? A. The back end of the pilothouse.

Q. The pilothouse was where the captain was?
3887 A. Yes.

Q. You went through a window just back of that? A. Yes.

Q. In the cabin? A. In the cabin.

Q. Will you show us how you got out the window with this model? A. I do not go right through that window, there is another one in the pilothouse.

Q. You went through the window in the pilothouse? A. I went through the window in the pilothouse.

Q. Did you see the captain go out that way?
3888 A. I do not see the captain, because the people were standing up before me, in front of me. He was in the bridge, and I get out on the starboard side.

Q. How many people got out ahead of you? A. I saw only one get out on that side, and one go through the door on the port side.

Q. The windows were broken out before you went through? A. No, it was not broken.

Q. Did you break the window? A. I break it with my head.

Q. Did you take a life preserver with you? A. 3889
I got no time to do that.

Q. The boat went down very quickly? A. Very quickly, filled with water.

Q. Did you hear any boards breaking before the boat went down, any cracking of lumber? A. When the boat started from the dock there was cracking ice; I heard the noise alongside. I could not see outside.

Q. You mean after the boat left the dock? A. Yes.

Q. Was it pretty dark? A. No, not very dark. You could see toward the middle of the 3890
river.

Q. How far did you get away from the dock when the boat filled? A. It was about three-quarters from the New York side, it was three-quarters from the New York side more than the middle of the river.

Q. You think you got over toward the Jersey side? A. Yes, sir.

Q. Have you been talking over this phase of the case with anybody? A. I was in the lawyer's office of the company.

Q. Did they ask you whether the boat was on the Jersey side or the New York side? A. I do 3891
not remember whether they asked me that question or no.

Q. You do not remember? A. No, I guess not.

Q. Was the boat usually crowded when you went over there as it was on that Monday morning? A. I was about the fifth or sixth man that got into the boat; I was one of the first men that got.

Q. You lived at 233 West 16th Street at the time of this accident, did you not? A. Yes, sir.

3892 Q. Do you remember being interviewed by newspaper men about this accident? A. I do not remember, but maybe.

Q. Did you make this statement which was quoted in the newspapers, one of them, at the time of the accident? "The boat was like that always when I worked for Spencer Kellogg & Sons, it was jammed with men, I was always afraid for the boat was dangerous." Did you say that? A. I cannot remember that, no, but there was many people in there.

Q. Was that a true statement? A. I guess not

3893 very true.

Q. You say this is not true? A. Not true; I did see many people there.

Q. You did see many people? A. Yes.

Q. But you say this is not true? A. I did not sign that paper.

Q. No, you did not sign any paper; I did not say you did. But you did talk to somebody and make a statement about the number of people in the boat? A. Yes, too many people come around, and they send all the people away, for I wanted to do something for the company, but they come to my house and I made a statement.

3894

The Court: Did you tell anybody the boat was filled on that occasion with men?

The Witness: Yes.

Q. Your recollection was pretty good at that time, was it not? A. Yes, sir.

Q. It was a very vivid experience, was it not? A. Yes, sir.

Q. A terrible experience, was it not? A. Yes.

Q. You nearly froze to death, you got full of salt water? A. Yes.

Q. You nearly drowned? A. Yes.

Q. And you were glad somebody saved you? A. Surely; glad to be alive again.

Q. You remembered all about it? A. All my life I remember it.

Mr. Axtell: That is all.

Cross examination by Mr. Englar:

Q. Is it your testimony that the boat was jammed on this morning? A. Well, there was more people than on other days.

Q. More people than on other days? A. Yes. 3896

Q. What is your best estimate as to how many people were on her this morning? A. Those I saw——

The Court: No, how many people were in the cabin on this morning, about how many?

The Witness: About 75 or more, your Honor.

Q. Are you sure there were more than 70? A. I figured at the time; I could not say for sure how many men, because I did not count them. 3897

Q. It might have been 70 or might have been 75, is not that so? A. Yes, that is right.

Q. Did you hear the captain say anything as to whether he was coming back again for another load? A. Before the captain left the dock he talked to the other men standing on the dock that he was going to make another trip, but when he was on his way to the New Jersey side, he said, "That will be my last trip."

3898 Q. I will just repeat that and see if I get it right. When the boat was at the dock the captain told the men on the dock he was coming back to make another trip? A. Yes.

Q. But after he got out in the river he said he would not make another trip? A. He would not make another trip.

Mr. Axtell: We will all concede on the record that he did not.

By the Court:

3899 Q. What do you say as to the number of men that were seated in the cabin? A. In the cabin, I guess about 40 men or more were seated around the boat.

Q. Was all the space taken up by men sitting down? A. Yes, all the men that could sit down.

Q. What is your estimate of the number of men that were standing up? What do you think was the number of men that were standing up in the cabin? A. On the Jersey side the boat was so crowded——

Q. Not on the Jersey side, I am asking you at
3900 the dock. A. The way I can tell you was one time there was too many people on the boat, and the captain was trying to get them to go off, the company don't let the people ride on the outside, outside of the cabin, and I do not remember just how many men was on. And once the boat was so crowded that way that they called a policeman, and they made the people get out, and afterwards they went to New York with a crowd of 50 men on that trip; and so there was about 20 men standing, and how many——

Q. Tell us how many men you think were standing up at this time? A. About 30 or 35 men or more. 3901

Mr. Englar: I do not care about what he was trying to say, except as it bears upon his intelligence. I would like you to understand he was explaining to you how he happened to estimate the number of men, because of his previous experience when they were counted, at least, that is what I gathered from what I heard of his statement.

The Court: I could not understand it. 3902

Mr. Axtell: Neither could I.

By Mr. Englar:

Q. Was anybody standing outside the cabin on this morning when the accident happened? A. It was pretty cold; nobody go outside. I don't see anybody outside, and the captain never allow anybody to go outside.

By the Court:

Q. Did you see anybody try to put on life preservers? A. The only—— 3903

Q. Yes or no? A. No.

Q. Did you reach for a life preserver? A. No.

Q. How did you get out? A. I got out through the window in the pilothouse.

The Court: Oh, yes, you have already so stated.

Mr. Englar: That is all.

3904 Re-direct examination by Mr. Axtell:

Q. You have filed no claim for damages? A. No, sir.

Q. Do you know this man, have you ever seen him? A. Yes, I saw him——

Q. Did you see him on the boat that morning? A. No, I saw him on the tugboat "Buffalo".

Q. Do you know he was on the stern end of the "Linseed King", standing outside? A. No, I do not remember seeing him on the "Linseed King".

3905 Q. You do not deny that he was there if he says he was there? A. I saw him on the tugboat "Buffalo".

Mr. Axtell: That is all.

(Witness excused.)

FRANK CHARLES, called as a witness on behalf of the claimants, having been duly sworn, testified as follows:

3906 Direct examination by Mr. Axtell:

Q. Where do you live? A. 163 West 133rd Street.

Q. Where were you born? A. St. Louisa, British West Indies.

Q. How old are you? A. I will be thirty years of age on the 14th of May.

Q. How tall are you? 5 feet 4 inches.

Q. How much do you weigh? A. About 145 pounds.

Q. Were you on the boat the "Linseed King" the morning that she sunk? A. Yes, sir. 3907

Q. Did you have an overcoat on? A. Yes, sir.

Q. How about the rest of them, did they have overcoats on? A. Some of them had, and they were dressed pretty heavy.

Q. Some had sweaters? A. Sweaters. I remember I saw Sullivan, he had one of those sailor jackets, something like that (indicating).

Q. You saw Sullivan. Where did you see him? A. He was standing on the stern of the boat.

Q. What part of the boat were you in? A. I was standing by the motor.

Q. In front of it or aft of it? A. I was aside of it. 3908

Q. Did not you hear the witnesses on behalf of the company testify that nobody could stand between the motor and the men who were sitting down alongside of it? A. Yes, the boat was pretty well packed, and you could stand in between the legs of the men. Some of them were sitting down, but you could get in very close; you could stand in between.

Q. How many were there in between the men sitting down and the motor? A. Well, about one of them could stand in there. 3909

Q. I do not mean in front of each man; the motor was more than one man long, was it not? A. Yes, on both sides.

Q. It was about 6 or 7 feet long, was it not? A. Yes, sir.

Q. How many men were on each side of the motor? A. I did not count them because——

Q. How many do you think? A. Well, I think about 6 or 7; 4 or 5 men on each side, something like that.

3910 Q. Were there any men aft of you standing up, or any men standing up back of you? A. Yes, we had men all around.

Q. How many were there back of you? A. I could not say exactly because I did not count them. All I can say was the boat was well packed.

Q. How about in front of the motor? A. Everywhere was packed.

Q. Did anybody stop you and ask you who you were and what you wanted and where you were going before you went aboard the boat? A. No, sir.

3911 Q. Did you make a statement to the District Attorney? A. Yes, sir.

Q. Did you say this, "Very well packed, yes, sir, because at one time I wanted to take my kerchief out of my pocket and could not get it out"? Did you make that statement? A. No, sir, I could not get it out.

Q. Did you make that statement? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. You do not know how many men were in there? A. Well, a rough estimation; I did not count them.

3912 Q. You do not know how many, you did not count them? A. No, sir.

Q. Were there any men sitting down? A. As far as my recollection goes, I think there were men sitting down.

Q. You have not seen a live man since that was sitting down, have you? A. Well, the men——

Q. All the men that have been called as survivors, not one was sitting on a seat, is that right? A. No, I did not recognize any.

Q. You have not seen any around here? A. No, sir.

Q. Did you know any other men on this boat? 3913
A. Yes, I had a personal friend of mine.

Q. What was his name? A. David Clark.

Q. Was he rescued? A. No, he was lost.

Q. Was his body found, do you know? A. His body was found.

Q. Is that the only one you know? A. Well, I know a few others, but not personally.

Q. Give me the names of them. A. Alexander.

Mr. Englar: He says he did not know th m personally, I do not know what he means.

3914

The Witness: He is from my home.

The Court: Alexander, you mean?

The Witness: Yes, sir. And there was a fellow, we used to call him Hamilton.

Q. Were they lost? A. Yes, sir.

Q. Were the bodies found? A. Yes, sir.

Q. Did you know any others? A. Not personally; I do not know their names, I know their faces.

Q. You do not know any who were lost and their bodies were not found, is that right? A. I do not know any names of the fellows. 3915

Q. Did you make any trips before on that boat? A. Yes, I made quite a few trips in the month of December.

Q. Do you know whether there was any ice in the river on any of the other trips? A. I do not recall.

Q. You do not remember? A. No, sir.

Mr. Axtell: That is all.

3916 Cross-examination by Mr. Englar:

Q. What sort of work were you doing over there? A. I did not work there at all; but this place was recommended to me by my friend Clark. He was working there as a pressman. So I wanted to try to get a pressman's job.

Q. You had been over there before? A. Yes, sir.

Q. Had not you worked at the plant at all? A. No, sir.

Q. Well, when did you first go over to the Spencer Kellogg plant? A. Well, I cannot re-
3917 member exactly the date or the day, but in the month of December, that is the time I started to go there.

Q. Had you been over there on the day before this accident? A. No, sir; I did not go there the day before; on Sundays as a rule I do not work.

Q. Did you go over on Saturday? A. No, I did not go on Saturday.

Q. You said you had been over there quite a few times, but never worked there. I do not quite understand that. A. I never worked there;
3918 I was there a few days, and I was trying to make a little more money for Christmas.

Q. You had been there looking for work? A. Yes, I wanted a pressman's job.

Q. When you gave this statement to the Distric Attorney you did give an estimate of the number of men that were on the boat, did you not? A. Yes, a rough estimation; I did not count them.

Q. Is this what you said: "Q. And how many men would you say were on the boat? A. A rough estimation, I should say between 70 and 80 men." Is that what you said? A. Or more; I told him

"or more," because I was in the hospital when 3919
he came.

Q. Is it your testimony now that you did not say what I just read? A. I said what is there, but I told him "or more." He asked me about it, and I can remember very well. He asked me if I would say there was 100, and I says, "Possibly, but I won't swear to it."

Q. That does not appear in your statement here, and as I understand it—— A. Maybe he wanted to make it short.

Q. I understand now you say that you did make the statement that I have read to you, but 3920
you added that there might have been more, is that right? A. Yes.

Q. You said you estimated there were between 70 or 80, but you said there might have been more, is that right? A. Yes, sir.

Q. Where was this window that you went out? A. On the side of the boat.

Q. Which side? A. Well, I cannot remember which side in the excitement; I do not have a proper detail of the occurrence of the accident.

Mr. Englar: That is all.
Mr. Axtell: That is all.
(Witness excused.) 3921

LENA BURNS, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. Mrs. Burns, you have filed a suit here for damages for the loss of your husband on the "Linseed King"? A. Yes.

3922 Q. You have four little children? A. Yes.

Q. One born since the death of your husband? A. Yes, two months after.

Q. Now, what was you husband's name? A. Charles.

Q. Charles Burns? A. Yes.

Q. And how long had you been married? A. Well, 5½ years before the accident.

Q. Where were you living at the time of the accident? A. 24 Lenox Avenue.

Q. When was the last time that you saw your husband alive? A. On the 20th of the month,

3923 six o'clock in the morning.

Q. And his body has never been found, is that true? A. Yes, sir.

Q. You have looked and inquired at the Morgue? A. Yes, I have been down there twice.

Q. How long had he been employed by the Spencer Kellogg & Sons plant before the "Linseed King" went down? A. About seven months, I think.

Q. Did you receive two weeks' wages from the company after his disappearance? A. The week he had worked there, and the one week he was about to make at his death.

3924 Q. They paid him for the week he would have worked? A. Yes, sir.

Q. What was his position over there? A. Well, he stencilled the bags and sewed the bags too.

Q. And he went over each day on the boat? A. Yes, sir.

Q. That is, you are informed that he did? A. Yes.

Q. Was your domestic life at home happy? A. Very.

Q. And you never had any trouble that morning or at any other time? A. No. 3925

Q. What time did he leave the house? A. He woke up earlier than usual; he left the house at 6 o'clock.

Q. Was he a strong, healthy man? A. Never was sick.

Q. Strong and healthy the last you saw him? A. Yes, sir.

Q. You have not heard anything of him since? A. No, sir.

Q. Was he fond of the children? A. Yes, he certainly was.

3926

Mr. Axtell: That is all.

Mr. Englar: No cross examination.

Mr. Axtell: Letters of administration have been issued; you have letters from the Court as administrator of his estate?

The Court: Do you concede the letters of administration?

Mr. Englar: I suggest that Mr. Axtell offer them.

Mr. Axtell: We will have quite a group of them later; we will offer a lot of others with it.

(Witness excused.) 3927

SYLVESTER O'DONNELL, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. Are you a fireman attached to the New York Fire Department? A. Yes, sir.

Q. How old are you? A. 38.

3928 Q. How long have you been in the Department? A. In the Fire Department, three years.

Q. Are you a mariner? A. Yes, sir.

Q. Were you attached in December, 1926, to a fireboat belonging to the City of New York? A. Yes, sir.

Q. Which one? A. The John Purroy Mitchell.

Q. Do you know or remember anything about this disaster to the "Linseed King"? A. Yes, sir, I remember it quite well.

Q. Was your boat in the vicinity at all? A. Well, we were at the Battery, you know.

3929 Q. Did you go up there? A. No, we went to a fire that morning at Christopher Street.

Q. Christopher Street is perhaps about a half mile below 14th Street, is it not? A. I would say about the foot of 14th Street; no, about a half mile below 14th Street.

Q. Around the Southern Pacific, the Clyde Line dock? A. Yes, the Lackawanna Ferry.

Q. Where else did you go that day, the 20th? A. Well, we went back to our berth that day.

Q. You did hear about this "Linseed King" accident at that time? A. Yes, sir.

Q. Did you read or know anything about the 3930 suggestion that ice had hit her at that time? A. Yes, they say, I was informed that she was sunk in the ice.

Q. You answered the question, "Yes." Do you remember where your boat was on the 19th, the day before the accident, Sunday? A. Why, I was off that Sunday.

Q. Do you remember where the boat was on the 18th, Saturday? A. I could not say offhand just what run she made. We laid at the Battery, but whether we had any runs or not, I am not quite certain.

Q. Do you remember whether there was any 3931
ice in the Hudson River on the 20th, the day of the accident, or any day before that? A. Yes, sir.

Q. What do you recall about it, and how do you recall it? A. Well, that Sunday night, you see, this happened on Monday morning, I went across the Fort Lee Ferry, and the ferryboat I came over on made several attempts to make the slip, and she could not make it with the ice.

Q. What day was this? A. Sunday night, about midnight.

Q. The Sunday night before? A. Yes.

Q. You just happened to be over there, is that 3932
it? A. Yes, sir.

Q. Were you an automobilist or a pedestrian? A. I was a pedestrian.

Q. What were you doing over in Jersey? A. I went home with a lady friend.

Q. And you were coming back about 12 o'clock the night before? A. Yes, sir.

Q. That is 130th Street, just a little ways above 95th Street, a mile or so? A. It is about a mile, I guess.

Q. What about the days before that? Can you remember anything at all about whether there was any ice around the Hudson River or in the 3933
harbor before that? A. Yes, sir, that Saturday night before I had been up to the New York Central Railroad, I formerly worked there, and I went up there with a friend of mine, I went up to see one of the captains that I used to work with, and I took a sail with him for an hour or so early that morning.

Q. Saturday morning? A. Sunday morning.

Q. Where did you sail with him? A. I went up, I met him at Pier 17, North River, and we

3934 sailed up to 68th Street, that is where their float bridges are. He was ordered to go up to the float bridge that morning, and he had quite a time to get into the bridge with the ice.

Q. Which side of the river is that on? A. The New York side.

Q. That is around 68th Street? A. Yes, sir.

Q. You remember that distinctly? A. Yes, sir.

Q. Do you recollect anything else about ice during the month of December, 1926, before this accident, or is that all you remember? A. That was quite a cold month, that December.

3935 Q. Did you have any specific instances of any ice before this accident than the two you mentioned? A. Yes, I think it was during that week when we had a fire up to Pier 29.

Q. On the North River? A. Yes, sir, and getting back aboard the boat one of the fellows went overboard in the ice and we pulled him out.

Q. How long before this accident was that? A. I think that was on the Monday before that.

Q. Do you mean there was ice on the slip or on the tugboat, or where? A. In the slip.

Q. On the pier? A. No, in the slip.

Q. You mean there was ice in the slip, in the
3936 water there? And he fell into it and you fished him out? A. There was ice in the river when we fished him out.

Q. That was a week before the accident occurred to the "Linseed King"? A. During that week, it was.

Mr. Axtell: That is all.

Cross examination by Mr. Englar:

Q. Now, this occasion when you came back on the Fort Lee Ferry Sunday night, that was on

the night of the 19th, is that right? A. Yes, sir. 3937

Q. And the time when you took this ride with the New York Central captain was on the early morning of that same day, the 19th? A. Yes, sir.

Q. About how early? A. Well, it was Saturday night about midnight; he went to change crews at 12 o'clock.

Q. It was about midnight between Saturday the 18th and Sunday the 19th? A. Yes, sir.

Q. And this other incident at Pier 29, you are not very sure about the date, are you? A. No, sir, I am not.

Q. But whenever it was, you remember that a 3938
man fell overboard and when you pulled him out there was some ice in the slip? A. Yes, sir.

Q. That is all you remember about that, is it not? A. Yes, sir.

Mr. Englar: That is all.

(Witness excused.)

ASA D. GRITMON, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

3939

Direct examination by Mr. Axtell:

Q. What is your occupation? A. Captain of the tugboat "William M. Bavier".

Q. Is that one of the Cornell Steamboat Company's boats? A. Yes, sir.

Q. How old are you, captain? A. 39.

Q. Were you in command of that boat on the 20th of December, 1926? A. Yes, sir.

3940 Q. Did you pick up some survivors from the "Linseed King"? A. Yes, sir.

Q. Do you know their names? A. No, sir.

Q. How many did you pick up? A. Five.

Q. Whereabouts in the river were you, opposite what point in the Hudson River, when you picked them up? A. Opposite the Palm Olive Oil Dock at Edgewater.

Q. How far above the Spencer Kellogg & Sons plant was that? A. A quarter of a mile.

Q. What time was it when you picked them up? A. Just about 7 o'clock.

3941 Q. You noted that time, did you, in your log or some other way? A. I put it in the log.

Q. Did you look at your log recently in this case? A. Yes, sir.

Q. And you are reasonably certain that was the time, a little after seven? A. Yes, sir.

Q. Were they white men or colored men? A. White men.

Q. All of them that you picked up? A. All that I picked up, yes.

Q. You picked up seven, where did you take them? A. Five.

Q. Five, I beg your pardon. Where did you
3942 take them? A. 129th Street.

Q. Some other boats picked up some more? A. There was a Standard Oil tanker that put out a lifeboat and picked up seven in a rowboat.

Q. Did anybody else get any? A. Why, the "Buffalo" was alongside the launch; I do not know how many she got.

Q. Did you see any ice in the river that morning? A. Yes, sir.

Q. Much of it? A. Well, there was quite a lot.

Q. What kind of ice was it? A. It was ice

that had been made up the river further and floated down. 3943

Q. How could you tell it was made up the river? A. Because they do not make ice at this stage of the weather down here; the water is too salt.

Q. Not as thick as that ice was, it never does freeze down here in the harbor much, does it? A. It all depends on the weather.

Q. Well, it is seldom that there is much ice formed around the harbor? A. Well, I have seen ferryboats stuck many a time.

Q. From ice in the slips? A. From ice in the river. 3944

Q. And this was floating ice, wasn't it, that was pushed into the slip by the boats themselves, or drifted in with the water? A. Yes, sir.

Q. But it was formed up the river further? A. Yes, sir.

Q. Was this ice thick or thin, or how was it? A. Why, the ice was about 4½ to 5 inches thick.

Q. Did you notice whether it was jagged on the edges, any of it? A. Salt water ice, generally, if it is not frozen too thick, always has fuzzy edges.

Q. You mean sharp points where the water has thawed it out? A. No, I mean soft edges. 3945

Q. Were any of these pieces of ice stuck together? A. Only by this soft snow-like, that is by the snow on the ice.

Q. Well, cakes get frozen together, do they not? A. Oh, yes, surely; they have to freeze.

Q. Did you see any wreckage or anything else there besides ice and the "Linseed King"? A. No, sir.

Q. You did not see any other object she might

3946 have collided with than ice, is that right? A. No, sir.

Q. Were you up the river any further that day with your tug? A. At Fort Lee Basin, that is opposite 158th Street.

Q. I show you a picture, Claimants' Exhibit CC; did you see ice like that in the river that day? A. Not where this accident occurred.

Q. Well, the tide was coming up the river at that time, wasn't it? A. Yes, sir.

Q. Ice like that has floated down the Hudson River and below there, to your knowledge, has it

3947 not? A. Yes, sir.

Q. And how far will a floe of ice float on the Hudson River on one shift of the tide? A. Why, I should judge about 15 to 20 miles.

Q. And then it will flow back 15 or 20 miles? A. Yes, sir.

Q. So ice at Nyack at high tide, at low tide will be off 42nd Street? A. Not so you could notice it.

Q. No? A. No, sir.

Q. How far up is Nyack? A. Nyack is about 25 or 28 miles.

Q. Yonkers, how far up is that? A. 17 miles

3948 from the Battery.

Q. How far is it from 42nd Street to the Battery? A. About 4½ miles.

Q. Then it will be 13 miles from 42nd Street to Yonkers? A. About that.

Q. Well, then, the ice could float on one tide from Yonkers down to 42nd Street? A. About that.

Q. And would easily reach 95th Street? A. Yes, sir.

Q. And if there is ice floating loose where the

ferries cross at Yonkers, it is reasonable to ex- 3949
pect that that ice might be found at the turn of the tide in the vicinity of 95th Street in the North River? A. Yes, sir.

Q. How long have you been sailing on the river, Captain? A. Since 1906.

Q. And you are thoroughly familiar with the Hudson River, winter and summer, are you not? A. Very much.

Q. And you have been with this company all of this time? A. Yes, sir.

Q. When does ice appear in the fall or winter down this far, down around Washington Point, 3950
around that section? A. It all depends on your weather.

Q. Under what conditions of weather may you expect it? A. Well, you will have to have real cold weather for a period of time to get ice down that far.

Q. If you had 11 degrees to 17 degrees above zero for a period of seven days between the 3rd and 8th of December, and a lot of cold weather after that, would not you, as a mariner, be on your guard to expect ice? A. Why not,——

Q. Down here? A. Not of any account down 3951
this far.

Q. Was the ice on the 20th of December, 1926, of any account? A. No, sir.

Q. That was not of any account? A. Not down here.

Q. That that you saw around 130th Street, was that of any account? A. That was not to us, no, sir.

Q. Well, you mean that it did not bother your tugboat a bit? A. That is it.

3952 Q. Are those boats protected from ice? A. They have a steel hull.

Q. And they have steel breakers too on the nose when they go up the river, do they not? A. Just a steel hull.

Q. You go right through the ice with them? A. Yes, sir.

Q. And you do it? A. Yes, sir.

Q. Go through ice even when it is solid and break it up? A. Yes, sir.

Q. Break it up and go through again, smash right through when you get stuck, is that right?

3953 A. Yes, sir.

Mr. Axtell: Your witness.

Cross examination by Mr. Englar:

Q. Captain, the question whether ice which happens to be up at Yonkers will come down to 95th Street in any given time depends on weather conditions, does it not? A. Very much so.

Q. I mean on wind and temperature? A. Yes, sir.

Q. If you have a wind blowing up the river, does

3954 that tend to hold the ice up the river? A. Very well.

Q. Does the set of the tide have any effect on where the ice will go? A. Yes, sir.

Q. Are the ice conditions above Fort Washington Point likely to be different from those below Fort Washington Point? A. Yes, sir.

Q. I mean, you may have a good deal of ice up above Fort Washington Point for several days, and not have it come down to 95th Street? A. Not for several days, no, sir.

Q. For how long? A. Well, about a day and a half. 3955

Q. Perhaps two days? A. Well, very seldom it is two days.

Q. If you have very cold weather, does that sometimes interfere with the ice coming down? A. Yes, if it is very cold weather.

Q. If it is very cold weather the ice may freeze along the shore? A. It stays there.

Q. Is it not true that the set of the tide at 129th Street and above is toward the New York shore? A. From Grant's Tomb up to Fort Washington Point, just this side of Fort Washington Point, it sets toward New York. 3956

Q. And it tends to put the ice into the New York shore, does it not? A. Yes, sir.

Q. If you have very cold weather is it likely to freeze there? A. No, unless the wind holds it there, the tide will take it back out again when it changes.

Q. But if you have a westerly wind or a northwesterly wind, with very cold weather, is it likely to keep the ice piled on the New York shore and freeze it there? A. It will stay there with a west wind.

Q. Were you able to form any opinion as to the character of this ice, as to how strong it was, or how solid it was, from what you saw? A. Why, it was the same as the ice is when it first comes down. It makes up the river that way, and by the time it comes down in this salt water it is generally softened up considerably, unless the weather is real, real cold, that is, below zero. 3957

Q. Did you observe the ice conditions in New York Harbor during the morning of December 20th, after these men were picked up and put

3958 ashore? A. Why, after the men were picked up the ice was gone. It had gone up the river. It was moving up the river when I got in there and picked them up.

Q. Where did your boat go after you picked up these men? A. Fort Lee Basin.

Q. Where did you go from there? A. Came back to 56th Street.

Q. On your way back from Fort Lee Basin to 56th Street was there any ice at 95th Street? A. No, sir.

Q. When you picked these men up, captain, was
3959 there ice clear across the river, from shore to shore? A. No, sir.

Q. Just tell us where the ice was? A. The ice was more on the Jersey side, at least a quarter way across the river.

Q. From Jersey? A. From Jersey, at this point. Down further it narrowed up, there was not so much.

Q. How was the center of the river? A. Clear.

Q. Was there ice on the New York side again? A. Why, there was a little that had not come out of the slips yet.

Q. How far below the place where you picked
3960 up these men did the ice extend, captain? A. About 80th Street.

Mr. Englar: That is all.

Re-direct examination by Mr. Axtell:

Q. How do you know that? A. Why, I passed it; I left 56th Street and went up the river, and of course I had to go by the ice on the way up.

Q. Where had you been? A. I meant 53rd Street; I had been at 53rd Street.

Q. Where had you been before that? A. I came in with a tow. 3961

Q. From where? A. From Tomkins Cove.

Q. Where is that? A. Just above Haverstraw.

Q. That is a long ways up the river? A. Thirty some miles.

Q. You came through ice all the way? A. Not all the way.

Q. Where did not you have ice? A. We ran out of the ice above 158th Street.

Q. You ran out of the ice? A. We ran out of the ice.

Q. How is it that if you ran out of the ice at 158th Street when you were coming down to 53rd Street, when you went back up the river you found ice? A. Yes, sir. 3962

Q. You mean that there was ice on the New York side more than there was on the Jersey side, is not that right? A. No, sir.

Q. What do you mean? I mean there was more ice on the Jersey side.

Q. There was more ice on the Jersey side? A. Yes, sir.

Q. At what time? A. At seven o'clock.

Q. Then your statement is that there was no ice below 158th Street? A. That is the idea; when I came down we ran out of the ice above 158th Street. 3963

Q. Do you not remember you were coming against the tide? A. I remember we were coming with the tide.

Q. Down the river? A. Very much so.

Q. At what time? A. We passed 129th Street at 5:15.

Q. And the tide was going which way? A. Ebb, down.

3964 Q. Now, you may assume that the tide tables show that you had high water at Governor's Island at 8:45 that morning. A. Quarter to nine, yes, sir.

Q. What is the difference in the tide between Governor's Island and 158th Street? A. One hour every 15 miles.

Q. How many miles is it up there, from the Battery to 158th Street? A. It is about 11 or 12 miles.

Q. 11 or 12 miles? A. Yes, sir.

Q. Then it would be about 9:45 high tide at
3965 158th Street? A. According to your calendar.

Q. If my tide table is right? A. Yes. But the water goes up until a quarter to twelve at the Battery after high water three hours. Your tide calendar shows 8:45, and the tide runs up to 11:45, but it does not raise on the docks, but it is still flowing up.

Q. I was not on your tug that morning, you were. A. Yes, sir.

Q. Have you any particular reason for knowing that the tide was going downstream when you passed 158th Street? A. Yes, sir, because we have to land our tow with the tide.

3966 Q. How do you account for the ice where you found it around 100th Street if the ice did not come down? A. Nobody said it did not come down there.

Q. I thought that was the question, that was the meaning of your answer, you ran out of the ice, there was no ice below 158th Street. You were running with the tide, were you? A. Yes, sir.

Q. But still you found ice an hour or two later at 100th Street? A. Yes, sir.

Mr. Englar: It is an hour or two later with the tide running. 3967

The Witness: We have a wheel on that boat; we go a little faster than the tide.

Q. Well, then, the ice had been flowing down ahead of you? A. The ice was flowing down, and we ran out of the ice above 158th Street. That is simply because we were going faster than the tide and faster than the ice. By the time we come by 158th Street we were out of the ice, and we had to come down with the tide to land this tow.

Q. What time was that? A. We landed the tow at 6:50. 3968

Q. At 52nd Street? A. 52nd Street.

Q. And that ice came down afterwards; did it not come down afterwards? A. No, sir.

Q. Was it the same ice you passed at 158th Street, that you left there, that you saw when you got to 95th Street later? A. It must have been; if we ran out of the ice above 158th Street it must have been the ice that we was ahead of.

Q. I suppose it is conceivable that there might have been flocks of ice other than that that you ran out of at 158th Street lower in the river? A. There might have been pieces of ice way in- 3969 shore.

Q. You could not see clear across the Hudson River at 5 o'clock in the morning, or at 6, could you? A. No, sir.

Q. You were guided by the running lights and the lights on shore, and the running lights of other boats, in your navigation? A. Yes, sir.

Q. And you could see ice if it was right up under the bow of your boat? A. Yes, sir.

Q. No, ice runs irregularly in the Hudson River

3970 when it flows down from Yonkers and other places? A. Yes, sir.

Q. There may be blocks of ice a mile long, or a quarter of a mile, or a hundred feet, or 50 feet, or 5 feet, is that right? A. Yes, sir.

Q. There is no regulating it at all? A. No.

Q. You do not want the Court to infer there was not any ice down as far as 42nd Street or the Battery? A. Yes, as far as my estimation goes.

Q. There might have been ice there? A. If it is down there it will be up to where we are.

3971 Q. You did not see it? A. That is as far down as I saw it; I did not see ice below 80th Street.

Q. You have no reason for paying particular attention to ice, have you? A. No, sir, not unless it is real heavy.

(Short recess taken.)

MRS. ANNA EBERLE, called as a witness on behalf of the claimants, having been duly sworn, testified as follows:

Direct examination by Mr. Axtell:

3972 Q. Your husband was on the "Linseed King"? A. Yes, sir.

Q. How tall, how big a man was he? A. Well, about 5 feet 4 inches.

Q. Did you see his body afterwards? A. Yes, sir.

Q. You identified it where? A. In the funeral parlor.

Q. Did you see his body at the Morgue, or was it your brother? A. No, that was his brother-in-law that saw it there.

Q. Do you recall the condition of the body when it was found? A. Yes, sir. 3973

Q. Will you tell the Court?

Mr. Englar: I do not quite see the materiality of that.

Mr. Axtell: It was found right afterwards; his body was not mortified, he was picked up right afterwards, he was one of the men in the boat.

The Witness: Yes, he was in the boat.

Mr. Axtell: It is simply the physical condition that I want her to describe. I do not want to lead her. 3974

The Court: How is it going to help us?

Mr. Axtell: It will have some bearing on the number of people in that boat.

The Court: The condition that his body was in?

Mr. Englar: I confess I cannot see it.

The Court: I cannot see it myself, but counsel thinks it will be helpful.

Mr. Axtell: I will ask a leading question to bring it out.

Q. Was his shoulder dislocated? A. Yes, sir, it looked like the shoulder was out of joint. 3975

Q. Did he have artificial teeth? A. Yes, sir.

Q. Were they all out? A. Yes, sir, they were all out.

Q. Were the plates broken? A. Yes, sir.

Mr. Axtell: That is all.

Mr. Englar: No cross examination.

(Witness excused.)

ADOLPH PAER, called as a witness on behalf of
3976 th claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. How old are you? A. 22 years old.

Q. Are you the brother-in-law of— A. I am the brother of Mrs. Eberle.

Q. And it was her husband who was drowned? A. Yes, my brother-in-law.

Q. Were you down at the pier that morning? A. Yes, sir.

Q. To go along with him? A. I was there, but
3977 I did not go.

Q. You did not go with him? A. No, sir.

Q. Had you been working for them before? A. Before, yes.

Q. How many trips had you made before? A. I was over there about three weeks.

Q. Have you ridden on her during that time? A. What is that?

Q. Had you ridden on the "Linseed King" during the week before the accident? A. No.

Q. Had you ridden on her the week before that? A. No, sir.

3978 Q. How long before that had you been on the boat? A. It was just exactly one year before the time that the accident happened; I was working in the winter time.

Q. Were you down at the dock on the morning of December 20th? A. Yes, sir.

Q. Were you there when the boat went out with her load? A. Yes, I was there, but I could not get on.

Q. How many men were left there besides yourself? A. There was seven or eight, and a couple

came afterwards, so there were about a dozen 3979
that could not get on there. He could not get any more men on the boat, and he said he was coming back again for the next trip.

Q. Coming back again to get you? A. Yes, sir.

Q. How many were on the boat that went out? A. There was, I could not exactly say, but there was about 90 or 95 went on in the boat, besides the other 12 that was left on the pier.

Q. Do you know whether there was anybody outside of the cabin when the boat went out? A. Plenty, yes, sir.

Q. How many? A. About 15 or 20.

Q. Did they get inside afterwards? A. I could 3980
not say about that.

Q. You do not know? A. No.

Mr. Axtell: That is all.

Cross examination by Mr. Englar:

Q. Did you count the men as they went on board? A. I did not count them; I just guessed at it.

Q. Did you have any particular reason for remembering how many went on, or noticing how 3981
many went on? A. Yes, because I remember that, because my brother-in-law told me before——

Q. Never mind what your brother-in-law told you before; I asked you did you have any particular reason yourself, apart from what anybody told you, for noticing or counting how many men went on the boat? A. Because I wanted to go over there, I wanted to get some work before Christmas.

3982 Q. And you could not get on? A. I could not get on the boat.

Q. And that is the way the number of men on the boat concerned you? A. Yes, sir.

Q. Where were these men that you say were on the outside? A. Some of the men left there, and they said they are going to take the 125th Street Ferry.

Q. No; you said there were some men on the outside of the cabin on the boat? A. Yes, sir.

Q. Whereabouts were they on the outside of the boat? A. On the side; on the side of the cabin
3983 where the windows was there was a little railing.

Q. And they were hanging on the sides of the cabin? A. They were staying on the side there.

Q. They were what? A. Staying on the side of the boat.

Q. They were holding on to the side of the cabin? A. On the little railing; there is a piece of pipe, you know, there.

Q. You saw them there when the boat pulled out? A. I saw them there.

Q. And when the boat pulled away from the pier you say there were 10 or 15 men holding on the outside of the cabin? A. I saw them there,
3984 yes, sir.

Q. Holding on to the outside of the cabin? A. Yes, sir.

Mr. Englar: That is all.

Mr. Axtell: That is all.

(Witness excused.)

BERNARD LANG, called as a witness on behalf of the claimants, having been duly sworn, testified as follows: 3985

Direct examination by Mr. Axtell:

Q. How old are you, Mr. Lang? A. 27.
Q. Married or single? A. Single.
Q. How tall are you? A. 5 feet 9 inches.
Q. How much do you weigh? A. 150 pounds.
Q. Were you on the "Linseed King" the day that she went down? A. Yes, sir.
Q. What part of the boat were you standing in? A. At the second window.
Q. From the front? A. Yes, sir. 3986
Q. Were there any other people standing in there? A. Yes, sir.

The Court: The second window, did you say?

The Witness: Yes, sir.

Q. Were you standing or sitting? A. Sitting; I was the first one to jump on the boat.
Q. You were the first man aboard the boat? A. Yes, sir.
Q. And you had a seat? A. Yes, sir. 3987
Q. You are the first man that I heard of that is alive that had a seat. Were there any other persons that had a seat that are alive? A. I do not know; but the first fellows in got seats.
Q. Was there anybody standing up? A. Sure, all around they were standing up.
Q. How many were there standing up? A. Oh, plenty.
Q. You were sitting back how far from the front, did you say? A. The second window.

3988 Q. How far would that be? The windows were this size, were they? (Indicating) A. Yes, sir.

Q. They were all the same size? A. Yes, sir.

Q. There were no windows bigger than that? A. No, sir.

Q. So there would be just one man in front of you, between you and the door? A. Well, first comes one window, and then there is a space, and then the second window.

Q. There was just room for one fellow to sit between you and the front, is that right, if the windows were this size? A. Yes, sir.

3989 Q. There would be just about room for one man to get in there? A. Oh, it was filled in there.

Q. I know it was filled—— A. There were benches on which the men were sitting.

Q. Yes, there were benches all along, but you said you were at the second window? A. I was exactly at the second window, yes, sir, that is where I was.

Q. There was one man in front of you sitting, between you and the front of the boat? A. Two men.

Q. There were two men; you were the third man? A. Yes, sir.

3990 Q. On which side of the boat? A. The left side.

Q. The left hand side looking forward? A. Yes, sir.

Q. The port side. How many men were standing up in front of you between you and the fellow opposite you on the other side? A. Oh, on the other side?

Q. How many men were standing up in between there? A. Just in that space?

Q. Yes, just take a line of them right straight across. A. Four, five, five. 3991

Q. Four or five? A. If you would go straight——

Q. If you stuck a sword through there you would be through about five men? A. About, yes.

Q. Besides those sitting down? A. Yes.

Q. It would be seven altogether if you count the men who were sitting down? A. Let us say five or six, if you count the fellow sitting down; let us say six.

Q. How about the back end of the boat? Was there anybody there? A. Yes, the fellows all went past me to get on; the captain says, "Pile around the motor case," because the fellows stand in front first, and don't want to go back. 3992

Q. Why? A. They want to get first out, I suppose.

Q. They are looking for jobs, is that it? A. Most of the fellows were new ones.

Q. Most of them were new ones? A. Yes, sir.

By the Court:

Q. Did you mean that most of them were new to the plant? A. Yes; there were about 40 press men, or 50 press men. 3993

Q. And the others were applicants for jobs? A. There were many new ones, yes.

By Mr. Axtell:

Q. Were you one of the old ones? A. I was one of the old ones, yes.

Q. Had you been riding on the boat regularly? A. Yes, sir.

3994 Q. How often did they take a crowd like that in the morning? A. Well, in the morning shift there was more people than on the afternoon or the evening shift, because that was when people rode that wanted to get a job.

Q. Did they ever carry as large a crowd as there was on that day on any other day that you were there? A. There was always a large crowd in the morning shift.

Q. How long had you worked for the company? A. That time seven months.

Q. Did you work any the year before? A. Yes,
3995 I think two or three weeks, and then I left and came back.

Q. Had you been over there on Saturday or Sunday before this accident? A. On Saturday, yes. I got the night shift, and I got on Saturday night at 11 o'clock on the shift.

Q. Who was running the boat that night? A. Fred Lang.

Q. Fred Lang? A. Yes, sir.

Q. Where is Fred Lang now, do you know? A. He was always night captain; he left a couple of months ago, I guess.

Q. His is the same name as yours? A. No.

3996 Q. Your name is Lang? A. Yes.

Q. But he is not related to you? A. No.

The Court: Where is he, he wants to know?

The Witness: I do not know.

The Court: All right.

Q. Are you still working for the company? A. Yes, sir.

Q. Were you over there when they made this

test on the boat, put a lot of men in there? A. Yes, sir. 3997

Q. How many men did they put in that boat when they made that picture? A. I cannot say exactly, but I counted 90; maybe I missed a couple. I counted 90.

Q. That morning they made the picture? A. That was an afternoon; I counted 90.

Q. Were you one of the 90? A. What?

Q. Were you one of those; did they put you in the boat? A. Yes, sir.

Q. You were one of them? A. I was one of them, yes, sir.

Q. Did they weigh you afterwards? A. Yes, sir. 3998

Q. And then did they patch the boat up, fix the holes in her and put her in the water? A. I did not see that.

Q. Did you see her in the water afterwards? A. No, sir, I did not see it, but it was gone after Monday, it was gone from the place.

Q. Did you see them filling some bags with sand? A. No, I did not see that.

Q. Those men that were put in the boat that morning when they had 90 in there, did they have overcoats on, or did they just come out of the place as they were working? A. At the test? 3999

Q. That was the time you were on there, when the boat was on land? A. That was 3 o'clock in the afternoon. The fellows just left their work for a couple of minutes.

Q. Do you think this is a picture of the men you saw in the boat? A. Yes; this is a picture; that is right.

Q. Petitioner's Exhibit 10. You counted 90 men? A. Yes, sir.

4000 Q. Were they as thick as that on the morning you came over that she went down? A. Well, inside, yes.

Q. You were in the boat, were you not? A. Yes, sir.

Q. Which time had the most? A. Well, I could not say; I guess it was about the same.

Q. The same inside? A. Yes, sir.

Q. Did you see any of these lawyers over there at the time they had these men in the boat testing it? A. Mr. Hagen.

Q. Did you see Mr. Matteson, did you see any
4001 of these gentlemen over there? A. Mr. Hagen, I saw him.

Q. You saw him? A. Yes, sir.

Mr. Axtell: I think it will be admitted he is one of the attorneys here.

Q. Who was managing it, who was directing it? A. I do not know.

Mr. Englar: I do not think this is very material, your Honor.

The Court: Sustained.

4002

Q. How did you get out of the boat? A. I smashed a window.

Q. How did you smash it? A. Well, before I left the dock——

Q. How did you smash the window? A. With my hand.

Q. You broke the glass? A. Yes.

Q. How did you get out after you broke the glass? A. Well, I took the frame out. There is a little clamp up at the top part and the bottom, and I opened it before the accident happened.

Q. You did? A. Yes. 4003

Q. You thought there was going to be trouble? A. Well, it was crowded, and I did not sit all the way. As soon as the boat left one fellow wanted to get off, he said, "I do not trust it any more." It was dark, and there was a lot of people there, and the people was bent over me, so finally I got where I could stand up and turn around to fix the window; and just with this the boat leaves, and I was not thinking of any accident, but I was fearing something like that.

Q. You wanted some air? A. Well, I say I was fearing that something was going to happen, but I could not say just that. 4004

Q. You had a premonition, that is what you mean? A. Yes; you can call it what you please.

Q. Worry? A. Yes; so I open up the two clamps. I open them, so that in case of an accident I could smash the glass out of the frame, and go through the window.

Q. In spite of the fact that you took the clamps out, you had to break the glass to get out, is that right? A. Smash the glass.

Q. Why, after you took the clamps out, why did you not take the window right out? A. Well, you know the clamps hold the frame, they hold it like that (indicating). 4005

Q. You did not take the whole frame out when you loosened it? A. How could you do that? The clamps were of course to hold the window, and the window is loose in there.

Q. When you took the clamps off, I suppose you mean on the side? A. No, on the top.

Q. Why did you not take the frame out instead of breaking the glass? A. We could not get hold of anything, and I do not think of that then.

4006 Q. There is nothing to hold on to after you get the clamps turned, is that right? A. That is right.

Q. So you had to break the glass after all? A. That is it.

Mr. Englar: He said he did not think of it.

The Witness: I loosened the clamps before I had broken the glass.

Q. But you said you had loosened the clamps?
4007 A. Yes, I had loosened the clamps, and then I did that so I could smash the window, of course, but I could not take the frame out unless I loosened the clamps.

Q. That is what I thought you had said, you had nothing to get hold of, and you had to break the glass to get the frame out, and without getting the frame out you could not get through the whole? A. That is it.

Q. You did not get any life preserver, did you? You could not get out of that at all with a life preserver on? A. I did not think of the life preservers at all.

4008 Q. Did they ever give you any training or instructions what to do in case of an accident on this boat? A. No.

Q. Never did? A. No.

Q. How many times before that while you were working for the Spencer Kellogg Company had they had a crowd like that on that boat, to your knowledge? A. Well, in the morning shift, as I say, always in the morning there was more of a crowd than there was at the night shift and afternoon shift.

Q. You do not understand; how many times did you have a crowd on like you had that morning? A. How many times I saw a crowd like that in the morning time? 4009

Q. How many times? A. Sometimes many; sometimes not so much.

Q. You were there seven months? A. Yes, sir.

Q. How many times in those seven months did you see a crowd like that? A. Part of the time I was on the morning shift, and there was more on the boat then, and part of the time I was on the night shift.

Q. Did you have a big crowd this morning, as many as you could get in? A. Yes, so many was in the boat. 4010

Q. How many times in the seven years that you worked there had you had that many on the boat? A. Well, always a crowd sits in there, and they have men standing inside.

Q. You mean every day? A. In the morning shift.

Q. As big a crowd as this? A. A big crowd, yes.

Q. Then this was nothing unusual in the morning shift? A. In the morning shift there is more.

Q. This boat unloaded at the dock in Edgewater, did she not? A. Yes, sir. 4011

Q. Where is Mr. Stover's office with respect to the place where you unloaded? A. His office?

Q. Is it very far away? A. Not very far, no.

Q. Did you ever see Mr. Stover on the dock when you unloaded? A. I do not know.

Q. Was he ever around there? A. I do not remember him being there.

Q. How about Mr. McHale, was he ever around there? A. Yes, I saw Mr. McHale.

4012 Q. Did he ever see any of these boats come in, either Mr. McHale or any of the other bosses, Mr. Aldrich, or any of them over there, were they there at the time the boats were unloading? A. No, I cannot remember at the time whether they were there or not; I do not know.

Mr. Axtell: All right, your witness.

Cross examination by Mr. Englar:

Q. You did not always have a big load on the morning shift, did you? A. I say in the morning
4013 shift there was more men on the boat than in the afternoon or in the evening.

Q. But when there was a seed ship being unloaded, then you had more men than usual? A. Yes; of course, yes.

Q. Was this any bigger load than you usually had on the morning shift when there was a seed ship in? A. Sometimes there was a big crowd in the summer time, and they stand around the boat, they never go inside the boat because it was hot inside. I do not know if they permit that or not.

Q. In the summer time? A. Yes.

4014 Q. But men never stood outside on the sides of the boat in the winter time? A. No, I would not say that because I never saw them.

Q. What I am trying to get at, in the winter time when there was a seed ship being unloaded? A. Yes.

Q. Did you usually have about the same size load on the morning trip that you had on this occasion? A. Well, I can remember that I saw sometimes a big crowd on the dock on the New York side, and a fellow asked me——

Q. Never mind about that. A. He said there 4015
was a seed ship, but I never know whether they are going to unload a seed ship or not, I never know that, but there was a big crowd then, yes, that is right.

Q. Let us just concentrate on one question. I do not think you quite get in mind the question I want to ask you. When there was a seed ship you always had a bigger crowd in the morning trip, that is right, isn't it? A. Well,——

The Court: Listen to the question.

A. I do not know if a seed ship was in or not. 4016

Q. What sort of work did you do there? A. I was a pressman.

Q. You were a pressman? A. Yes, sir.

Q. You know sometimes they would unload seed ships? A. Well, I say no, I never know what the ship was, and I never know about that. I never know anybody around there. I had no friends there.

Q. You did not know then whether there was a seed ship or not to be unloaded? A. No, I did not know, but I know people come over to get work. What kind of work they wanted, I never 4017
know.

Q. All right. Tell me this, do you remember some days the boat would make an extra trip? A. Well, I hear sometimes that they make an extra trip, but I never saw it myself.

Q. You always get the regular boat? A. Yes, sir.

Q. And if they made another trip you did not know about it? A. No.

Q. There was a certain gang of press men that

4018 came over every morning? A. Every morning, every day, yes, sir.

Q. And there was a regular trip to take them? A. Yes, at 6 o'clock in the morning.

Q. Whether another trip was made for these new men or men looking for work, you do not know? A. I do not know.

Q. But yet you said you heard the captain say on this occasion, the morning of the accident, he was going to make another trip? A. No, I didn't hear nothing.

Q. You did not. I am thinking of another wit-
4019 ness. What time did the boat leave on the morning of the accident? A. I guess it was five minutes early; it was very early that morning.

Q. It was earlier than usual? A. Yes.

Q. What was the usual time for the boat to leave on that morning trip? A. Half past six.

Q. As a matter of fact, she left the Jersey side at half past six and got to the 95th Street pier at 6:35? A. She should leave at half past six on the New York side.

Q. That morning she left early, you say? A. She was very early; I didn't have no watch, and I do not know the exact time that she left.

4020

Mr. Englar: That is all.

Re-direct examination by Mr. Axtell:

Q. This boat ran on a regular schedule, she was always there at 6:30? A. What?

Q. You fellows always expected to catch the boat at a regular time? A. 6:30.

Q. When was the next time? A. I think 8 o'clock, no, half past eight.

Q. Every half hour? A. No; one hour later. 4021

Mr. Axtell: That is all.
(Witness excused.)

ALFRED C. SMITH, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. Capt. Smith, you are a pilot or captain? A. Yes, sir. 4022

Q. What license do you hold? A. Pilot's, and unlimited master's.

Q. You have been many years on the water; how many? A. I have been steamboating 41 years.

Q. On the Hudson River? A. Yes, sir.

Q. You heard the testimony of the Cornell Steamboat pilot? A. Yes, sir.

Q. Where were you on the 20th of December? A. I was pilot of the fireboat "Mitchell".

Q. That is the same boat as this other gentleman; what was his name? A. O'Donnell. 4023

Q. O'Donnell? A. Yes, sir.

Q. He was a member of the crew of that boat, or what was he? A. He was one of the firemen.

Q. Do you remember anything about ice on the river around that time? A. Yes, sir.

Q. Tell the Court what you know about ice in the river at that time or previous thereto. A. I know at about this time, two or three days before that accident, we had quite a little ice in

4024 our slips; it was well churned up from drifting down the river, but at the same time it was quite annoying on landing your boat in the slips.

Q. Where is your slip? A. Our slips are many; wherever our stations may be. We had a couple of runs during this period, and each time we needed a line on the dock to work our engines ahead in order to crush the broken ice up to get the fireboat in the dock for the firemen to spring on the dock.

Q. Was that ice that had formed in the slip, or ice that had drifted in? A. No, it was drift

4025 ice; ice well churned up from drifting down the river.

Q. How many days before the accident to the "Linseed King" did you notice ice of that character in the slips around New York? A. About two or three days, drift ice around in the slips, which had come down the river.

Q. What about this? Can a man come down with the tide at 6 o'clock at 158th Street and find the tide flowing up, and later, at 95th Street, assuming that it was high tide at Governor's Island at 8:45 the same day, find ice? Is such a thing possible?

4026

Mr. Englar: Just a moment. I do not think that is a correct statement at all of the previous witness' testimony.

Q. Explain to the Court how the tide does run and the currents? A. What time was it high tide at Governor's Island?

Q. 8:45 A. M. A. What time was this man up at 158th Street.

Q. About 6 o'clock. A. The tide would run up about 3½ hours after high water at Governor's Island.

Q. At 158th Street? A. Yes, sir. 4027

Q. Then if the tide were high at Governor's Island at 8:45, would the tide be going up or down the river at 158th Street at 6 o'clock in the morning? A. It would be going down at 6 in the morning; if it was high at 8:45 it would be ebb, about the last of the ebb down at Governor's Island.

Q. But up at 158th Street? A. Well, it would be running ebb down there at that time.

Q. How long would you say it takes broken ice to float down from Yonkers? A. I could not say exactly. I have broken ice for many years 4028
for the same concern that this man was working for, on one of their boats, the "R. G. Townsend", going up there and breaking ice from 52nd Street up as far as Haverstraw. That was our duty.

Q. Is there any certainty when ice will appear down at 95th Street? A. No; the weather has a whole lot to do with it. When there is no ice down here it will break up above and come down with an ebb tide.

Mr. Axtell: All right, you may inquire.

Cross examination by Mr. Englar: 4029

Q. You have told us all that you remember about ice prior to the day of this accident, have you not, Captain? A. Yes, sir.

Q. All you remember is, for a period of two or three days you found ice in your slips? A. Yes, sir, that is the main part of my statement.

Q. And where are the slips that you use? A. Well, we are using the slip up around Christopher Street, from there down to the Battery and

4030 around the East River and South Brooklyn. But it was in the North River I found this ice.

Q. That ice may have come from either direction, may it not? A. No; it had to come down the river. It does not make ice down below.

Q. There is some evidence that ice came out of Greenville Flats; one of the witnesses said. A. No, there would be no ice from Greenville Flats up the North River in those slips.

Q. Would there be any ice from Greenville Flats go around Governor's Island? A. Yes, it may blow over to Governor's Island.

4031 Q. Then on the flood tide what is to keep it from going up the North River? A. There is never ice enough makes on Greenville Flats ever to go up the North River. I have been stationed at that one point now 20 years, and I have yet to see ice from Greenville Flats going up. Whatever ice is on Greenville Flats, as a rule stays there, and all the ice you can see going up the river is ice carried down on the last of the ebb tide, and the first of the flood will carry that same ice back up the river again.

Q. It has been rather suggested by some of the statements in this case that a given quantity

4032 of ice, if you put it out here in the river, will run about 15 miles up the river and 15 miles back, and keep running back and forth about 15 miles on each tide indefinitely, is that so? A. 15 miles is quite a ride for it; it is a little too far, according to what I have found out.

Q. As a matter of fact, the question of what direction ice will go or how far it will go depends on a number of other things besides just the direction of the tide, does it not? A. Yes, sir.

Mr. Englar: That is all.

JOHN SULLIVAN, called as a witness on behalf of the claimants, being duly sworn, testified as follows: 4033

Direct examination by Mr. Axtell:

Q. What is your occupation, Mr. Sullivan? A. I am a switcher.

Q. For what? A. Freight switcher.

Q. What railroad? A. The Old Dominion Steamship Line.

Q. That is a clerical position? A. No, a dock position.

Q. How long have you been there? A. I have been there I guess about six months. 4034

Q. On December 20, 1926, where were you about 6:20 in the morning? A. I was at the dock at 95th Street.

Q. Do you know what time you went into the water that morning? A. About——

Q. 6:40, I meant? A. About 6:35 or 6:40.

Q. You were on the "Linseed King" that morning, were you? A. Yes, sir.

Q. Tell the Court how you got aboard her, and so forth. A. A fellow by the name of Ice and myself, we were rooming together, and we went to this Spencer Kellogg plant on Saturday to get 4035 a job. They gave us a ticket and told us to go over Sunday morning. We went over Sunday morning; and the ship had not gotten in yet, and they said it was to be in Monday morning. We were told to catch the 6:30 boat Monday morning, to unload the ship.

Q. Who told you that? A. The timekeeper, the man in the timekeeper's office.

Q. What was his name? A. I could not say what was his name.

4036 Q. Ice was with you at the time? A. Ice was with me at the time.

Q. Is he alive now? A. He is alive now to my knowledge.

Q. Where is he? A. The last I heard from him he was with the United States Shipping Board.

Q. Down at 45 Broadway? A. At Perth Amboy.

Q. Have they got an office out there? A. They have a fleet there.

Q. What part of the boat did you get on to? A. I got on the bow of the boat.

4037 Q. Did you stay there? A. I could not stay there because there was ice on the bow of the boat, and I could not stand up, so I walked along the cabin of the boat to the stern.

Q. Why didn't you go inside? A. I couldn't get inside.

Q. Why? A. There was no room.

Q. Did you try? A. There were men squeezed in the door.

Q. Did anybody tell you not to get on? A. Nobody told me not to get on.

Q. Were you told by the timekeeper to be over there? A. I was told by the timekeeper to

4038 catch the 6:30 boat at 95th Street, New York.

Q. What work were you going to do. A. Laborer.

Q. Unloading a ship? A. Unloading a seed ship.

Q. What is known as longshoreman's work? A. Longshoreman's work, yes, sir.

Q. Where did you ride on this boat across the river? A. I rode on the port stern.

Q. Was anybody else out there with you? A.

There were three other men out there with me. 4039

Q. Who were they? A. I could not say.

Q. Were they white or black? A. Two white men and one colored man.

Q. Are any of them living now? A. Not that I know of.

Q. Did you see them in the hospital, or were any of them picked up afterwards, that you know of? A. I did not.

Q. Did you see them drowned, as a matter of fact? A. I did.

Q. How many other men did you see drowned that morning? A. I can say about five other men. 4040

Q. That is eight men you saw drowned altogether? A. Eight men.

Q. Tell the Court what happened at the time of the sinking as you saw it from the back of the boat. A. Well, as we got on the boat at the 95th Street dock the bow was pointed in to the dock, and there was no way of getting on the stern or along the cabin; you had to get on the bow to go into the cabin, either port or starboard side, and either walk to the stern alongside the cabin, where there was a small rail along the top of the cabin for a hand hold, a pipe, quarter inch pipe, 4041 I guess, and I could not get into the cabin; so I walked along the port side of the launch to the stern. There was a railing around the launch extending to the stern, and a pair of steps going up there. I jumped over the railing and stood on the port stern.

Q. Inside the rail? A. Inside the rail.

Q. Go ahead. A. I was standing on the port stern. The gas exhaust from the engine in the process of the launch going ahead, it was blowing

4042 right in my face, and I had my coat covering me up, so that it sort of smothered me. I turned looking to the back of the ship, and as we proceeded forward, after a few seconds there was a jar, as though we were hitting ice, and it jarred the boat.

Q. Is this a picture showing the rail you were referring to, Claimants' Exhibit HH? A. Yes.

Q. You can show the Court where you were on the boat? A. Yes, sir.

Q. Before she submerged? A. Yes, sir, right here. (Indicating.)

4043 Q. You were showing the Court the port stern? A. Yes, sir.

Q. Go ahead, tell what happened. A. Well, there was ice all around the river that morning, and as we were going ahead hitting these pieces of ice, the boat was getting a jar. I had an idea it was very unusual for a man of any river experience to handle a launch that morning with as many men on it as that launch had, going full ahead with the river full of ice. Now, when we proceeded to about mid-stream, the boat got a jar, and we lunged to the starboard side, gave a list, rather.

4044 Q. You mean she rolled to the right? A. She gave a list.

Q. Rolled to the right? A. Rolled to the starboard side, and then came back to an even keel. Then she took a port list and sunk on an even keel, sunk right down.

Q. Did you hear any yells or noise? A. There were a good many yells and a lot of noise in the inside, of the men scrambling to get out after she took this starboard list.

Q. Tell how the men got out of there, left the

boat, and how you left the boat. A. When she took the starboard list I seen there was no chance of staying on the boat. Of course, I did not know whether she would float or she would sink, so I dove, and started to swim to a piece of ice. 4045

Q. How far did you have to swim? A. The first piece of ice I guess I swam 20 feet to.

Q. Do you know which piece of ice you struck? A. Well, it must have struck a piece of ice on the port side.

Q. Was there a piece of ice there at the time? A. There was a large piece of ice there.

Q. At the time she took this bump? A. At the time she took the list. 4046

Q. There was ice on her port bow? A. There was ice right off her port bow.

Q. Did you hear any noise from the wood at that time? A. No, I did not.

Q. The motor was running? A. The motor was running, yes, sir.

Q. And the exhaust was right beside you? A. Coming up right in my face.

Q. How high in the water did that piece of ice extend? A. It did not extend up, it laid flat on the surface.

Q. You say the boat took a roll at that moment? A. To the starboard side. 4047

Q. First she struck, and then rolled to the starboard, and then rolled to the port? A. Then rolled to the port.

The Court: Went down on an even keel, he said.

The Witness: Went down on an even keel, like a pan in a bucket of water.

4048 Q. Which side did she strike first, port or starboard? A. She struck the port side.

Q. Did she strike after she rolled? A. After she rolled to the starboard side there was a jar.

Q. How far was her rail above the water, how much freeboard did she have amidships? A. Amidships she had a freeboard of about 6 to 8 inches.

Q. Have you been on boats before? A. Yes, sir.

Q. And you know what you are talking about? A. Yes, sir.

Q. You know the freeboard is the distance from
4049 the deck down to the water line? A. The freeboard is from the deck to the water line; there was 6 to 8 inches of freeboard.

Q. How much freeboard did she have at the bow? A. At the bow I guess she had about 12 to 15 inches of freeboard, at the bow.

Mr. Axtell: Let me have a picture of the hole in the boat.

Q. Did you see the boat afterwards? A. At the 95th Street dock.

Q. Did you see this hole in her afterwards? A.
4050 I saw that hole in her.

Q. Did you see that the hole was down low enough so that ice floating on the water would strike as high on the boat as that? A. Yes, she was down in the water at the time low enough so that ice would have made that hole.

Q. Did you see anything else around the boat that the boat could have hit besides ice? A. Nothing whatever.

Q. Are you certain she did hit ice? A. I am certain.

Q. How about that hole? This is a bigger pic- 4051
ture and shows the position better. A. Yes, sir.

Mr. Axtell: I offer this one taken on the 22nd of December.

Mr. Englar: Mark it for identification.

Mr. Axtell: I offer it in evidence.

Mr. Englar: I object to it until I have a chance to look at it, to see that it is a correct photograph.

Mr. Axtell: Look at it to your heart's content.

Mr. Englar: I do not know when it was 4052
taken. It looks something like it.

(The picture was later handed to the Clerk and marked Claimants' Exhibit LL of this date.)

Q. Had you ridden on the boat on other days? A. Yes, sir.

Q. Those other days that you spoke of going over there? A. Yes, sir.

Q. Had you noticed there was any ice in the river on any of the other days before that? A. Not that I noticed.

4053

Q. You did not notice? A. I did not notice it.

Q. When you got out of the boat you got on a cake of ice? A. Yes, sir.

Q. Some witness said you were standing with your hands in your pocket and a cap on looking pretty comfortable. A. After I had struck two other pieces of ice, two pieces of ice had gone down under me.

Q. You had gotten up on this larger cake? A. Yes, sir.

4054 Q. When you got up there did you make any note or count of other men floating around on cakes of ice? A. I did; I looked back.

Q. How many did you see? A. I counted between 35 and 40 men around the boat and on cakes of ice.

Q. You do not know just how many were taken in? A. Taken in? Just what do you mean?

Q. Carried into the slip afterwards? A. No, I do not.

Q. 35 or 40 besides the ones you saw drowned?

4055 Mr. Englar: Do not lead him.

Mr. Axtell: I guess it is apparent.

Mr. Englar: I do not think it is apparent at all.

Q. You said these other men were drowned when they left the boat, did you not? A. Yes, sir.

Q. The three that were on the stern with you? A. Yes, sir.

Q. And you said you saw five others drowned, is that right? A. Yes, sir.

Q. When you counted these 35 or 40 men, was
4056 that after these 9 men had drowned? A. That was after I had looked back and saw the men on the boat and the men on the ice.

The Court: Did not the boat go down?

The Witness: The boat did sink, but was not entirely down.

Q. She did not submerge entirely? A. The pilothouse and the after part of the cabin were afloat.

Q. How many men did you see hanging on the "Linseed King" after she submerged? A. About 25 men. 4057

Q. Some man testified that there were eleven hanging on that survived and were carried in; do you know how many there were at the end? A. No, I could not say.

Q. But at the time you counted 35 or 40, there were 25 or so around the boat? A. There were about 25 around the boat.

Q. And you saw how many others on cakes of ice? A. There was two other men on the cake of ice I was on, and there were others on cakes of ice down near where the boat was. I was away from the boat. 4058

Q. And you saw nine men drowned, is that right? A. Eight men.

Q. Eight men drowned? A. Eight men drowned.

Q. And then you saw 35 or 40 alive? A. Yes, sir.

Mr. Englar: I suggest you are leading him, Mr. Axtell.

The Court: Is that all?

Mr. Axtell: Not quite. 4059

The Court: Can you come tomorrow morning conveniently?

The Witness: Yes, sir.

The Court: We will adjurn until tomorrow morning at half past ten.

Adjourned to Wednesday, January 25, 1928, at 10:30 A. M.

4060 New York, January, 25, 1928.

Met pursuant to adjournment at 10:30 A. M.; present as before.

JOHN SULLIVAN, resumed the stand.

Cross examination by Mr. Englar:

Q. Is it your testimony the boat was going at full speed from the time she left the dock? A. From the time she left the dock until she sank.

Q. Full speed all the time? A. It seemed to me
4061 as though it was going full speed.

Q. You said there were four of you on the stern of the boat, is that right? A. Four of us, yes, sir.

Q. Were you the first or the last of the four to go off the stern? A. I was the second man off the stern.

Q. And when you went off, the first thing you did was to swim to a piece of ice, I understand? A. I did.

Q. And after you had reached this piece of ice and gotten in a place of comparative safety, that
4062 was when you did your counting of men, wasn't it? A. These men that were on the stern behind me, they were following me, and I left this piece of ice to give them a chance, and I went to another piece of ice.

Q. When you got to the second piece of ice was that when you did your counting? A. Yes.

Q. And the most men, as I understand it, that you ever saw outside of the boat, was about 35 or 40, is that right? A. About 35 or 40 men.

Q. Weren't you told by the captain of the boat to get off the boat? A. Get off the boat?

Q. Yes. A. Where at? 4063

Q. At the dock, 95th Street. A. No.

Q. Didn't you say to the District Attorney, "There were these fellows trying to edge in the cabin at the front door on the port side, and they were taking quite a long time to get in, and the captain was hollering for me to get off the bow, and there was two fellows in front of me"? A. To get off the bow, not to get on the dock.

Q. What he told you was to get off the bow of the boat? A. Get off the bow of the boat and walk to the stern of the boat.

Q. Did he tell you to walk to the stern of the boat? A. Get out of the way, get off the bow, go aft. 4064

Q. Did he tell you to go aft on the outside of the cabin? A. You could not go aft on the inside. The boat was away from the dock then, so I could not get back on the dock.

Q. What did he say to you at that time? What did he say? Give his words. A. That is some time ago. I cannot give his exact words.

Q. Isn't it a fact you jumped on the stern of the boat after the bow was away from the dock? A. No, sir, not I.

Q. You are positive of that? A. I am positive. 4065

Q. Did one-man do that? A. One man did.

Q. One of the four? A. One of the four on the stern with me.

Q. Was he a white man or a colored man? A. He was a colored man.

Q. In estimating the men for the District Attorney did you estimate there were from 60 to 80 men on the boat? A. I cannot recall that I did.

Q. Do you deny you told the District Attorney

4066 that? A. I do not deny I did. I may have and I may not.

Q. Have you had any talks with a man named Mayers since this accident happened? A. I do not know the man.

Q. You do not know him? A. I do not know the man. There was a man that came to my room and saw me. He was from the company. I do not know who he was, or what his name was.

Q. You do not know anybody named Mayers? A. Not that I know of.

Q. When did you ride on this boat first? A.
4067 Saturday, the 18th.

Q. And then you rode on her Sunday? A. Sunday, the 19th.

Q. And Monday? A. And Monday.

Q. What experience have you had on boats? A. I had quite a bit of experience on boats.

Q. What sort of boats? A. Steamboats, whaleboats, skiffs, and launches, power boats.

Q. How old are you? A. 25.

Q. 25 now? A. 25 now.

Q. When did you take these drafts on this boat; you gave us some drafts yesterday, or freeboard? A. I took them as I got on the boat, after I had
4068 gotten on and gone back to the stern of the boat.

Q. Can you take draft accurately when standing on the deck of the boat? A. I did not give an accurate estimation. I could not. I did not have a rule. I only relied on my eyes.

Q. As a matter of fact, hasn't this boat got an overhang? A. Just what do you mean by overhang?

Q. Don't her sides, particularly at the bow, slope inward as they go down and outward as they go up, in other words, are her sides straight

up and down, or do they slope either way? A. Where do you mean the slope is? 4069

Q. On the side of the boat near the bow. A. Do you mean toward the keel or aft?

Q. I mean toward the keel. A. If there is a slope, a sort of V-shape, you mean?

Q. I am asking you to tell us what it is like, whether the sides of the boat go straight up and down, or whether they incline either way? A. The bow would go straight up and down, that is right at the plow of the boat.

Q. You mean at the stem? A. On the plow of the boat, that is the front part of the boat. 4070

Q. Let us take two or three feet aft of the stem; tell me whether the sides of the boat go straight up and down from the deck to the water line, or whether they slope either way? A. They do not slope either way. The sides of the boat go fairly straight to the water line.

Mr. Axtell: I direct the Court's attention to the fact that this witness is correct about that. (Showing the Court Exhibit 4.)

The Court: Explain this, please.

Mr. Axtell: As to whether the sides went straight up and down. 4071

The Court: The sides at the bow he is inquiring about.

Mr. Axtell: They are the same all the way back.

The Court: He is inquiring at the bow.

Mr. Axtell: Look at the bow here. I offer that in evidence. It is not vertical, but she is pretty near straight.

Mr. Englar: Do you want to offer that in evidence?

4072 Mr. Axtell: Yes.

Mr. Englar: I do not see any name on it.

Mr. Axtell: I assume it is that boat.

Mr. Englar: I think you had better prove when it was taken and where.

Mr. Axtell: I will tell you when it was taken, April 7, 1927, at Weehawken, New Jersey, after the boat had been passed and put back in the water.

Mr. Englar: You can prove when it was taken.

4073 Mr. Axtell: We can get the photographer over here.

Mr. Englar: You have subpoenaed some, haven't you?

Mr. Axtell: No, we did not need to.

The Court: I think you can make a concession as to that, can't you?

Mr. Englar: I think the picture is touched up.

Mr. Axtell: It is touched up, I concede that, for photography purposes, but I can wash that up in a second, but here is another one. Here is a good one that shows

4074 the shape, and has her name on it.

Mr. Englar: I do not think that shows anything about what we are talking about at all.

Mr. Axtell: It gives a pretty good idea of the shape of the boat in the water.

Mr. Englar: If you prove that first one, when it was taken, that will be all right.

Mr. Axtell: I offer this one as evidence that this vessel had straight sides, based

on the cross-examination of this witness, and to rebut your evidence. 4075

The Court: Do you object to it?

Mr. Englar: I do, on the ground it is not properly proved.

The Court: It is fairly illustrative, isn't it? Of course, it would not be conclusive; if you think the picture has distorted the appearance of the bow, that is one thing, but photographs are received for illustrative purposes.

Mr. Axtell: There is a picture here subpoenaed from the files of a newspaper. 4076

Mr. Englar: That picture is taken head on to the side and shows nothing as to the side at the bow.

The Court: Do you think its appearance is distorted?

Mr. Englar: Absolutely.

Mr. Axtell: This shows the flare on this side. She has some flare.

The Witness: Have you a photograph of it taken right head on the bow?

Mr. Axtell: Let all three go in.

The Court: How about this one that shows a flare on the port side? 4077

Mr. Englar: It shows it, yes, sir. I am willing to have all three go in merely as showing the shape of the bow, but I think there are other features about them that are not entirely accurate.

The Court: Received for that purpose.

Mr. Axtell: There is a little paint put on there for the purpose of photography, and it may be washed off. That is done for reproducing plates.

4078 (The photographs were marked Claimants' Exhibits MM, MM-1, and MM-2 in evidence.)

Q. Before the District Attorney were you asked this question and did you make this answer: "Q. How many men could you say there was on the boat? A. Why, I guess you seen the boat, you see the cabin of the boat, just as many people in there as you could pack in, just like a jam, I guess there was between 60 and 80 men on the boat easily." Is that what you said? A. That is what I said.

4079 Q. Is that what you say now? A. That is what I say now.

Q. You did not know how many men were on the boat? A. No, I would not know unless I counted them.

Re-direct examination by Mr. Axtell:

Q. You were not in the cabin, were you? A. No, I was not in the cabin.

(Witness excused.)

4080 Mr. Englar: If your Honor please, before we go on with any more witnesses I should like to take up the question of the production of documents. Mr. Aldrich, the secretary of the company, went back to Buffalo on Friday night or Saturday, and arranged to send on here several packing cases full of papers. Our disposition has been, and still is, to produce anything which has any bearing on any of the issues of the case, and which the Court thinks ought to

be produced, but the notice to produce 4081
which was served on us calls for the production of an enormous mass of records. Mr. Aldrich has brought on here, or sent for his secretary, who has come on, to take care of these documents and pick out anything that is material, and I would like Mr. Axtell to state now just what he wants from those documents. It is quite impractical to bring them all up here in the court room.

Mr. Axtell: I know we want the time cards showing the men employed in December, 1920, and if we could get an 4082
accurate statement as to how many were employed in the plant totally on that date, how many were employed in 1920.

The Court: Why 1920?

Mr. Axtell: It is part of our contention the number of workmen was greatly increased, and that they increased the size of the boat, but they did not increase her adequately. They should have gotten a bigger boat, and that is reflected to a certain extent by the number of men they employed. 4083

The Court: Don't you think that is rather remote?

Mr. Axtell: Yes, it is remote, but this case has been prepared with a view to thoroughness.

The Court: I think you will have to have in mind the inconvenience that a corporation like this petitioner is, is put to.

Mr. Axtell: They have the accurate report to show how many people were em-

4084 ployed in different years. Probably they can furnish that without bringing the books.

The Court: There will probably be testimony satisfactory to you instead of the cards of 1920.

Mr. Axtell: We want the cards of 1926, to satisfy ourselves how many of their workmen were living in New York.

The Court: The purpose of that is what?

Mr. Axtell: To show how many people they caried on their boat, the total number aboard it.

4085

The Court: Who were living in New York?

Mr. Axtell: Yes.

The Court: This boat made a number of trips during the day, didn't it?

Mr. Axtell: Yes, but it would not take long to get that information. I think they could give it to us.

Mr. Englar: These cards Mr. Axtell refers to do not contain any addresses. The addresses are contained in an envelope, one of which we have for any man who ever

4086 worked in the plant, a separate envelope for every man who has a permanent number, every man who has ever worked in the plant, that is, every man who has been permanently employed. I am not sure, as to floating labor that comes and works one day or two days, that we have any addresses at all, but for every one who worked at the plant permanently, we have a permanent number which coresponds to the envelope, and that envelope contains the

address of that man as far as we have it. 4087
Of course, those envelopes are not arranged in reference to this case, but Mr. Aldrich's secretary in a day perhaps, or a day and a half, could pick out all the envelopes for the men who worked for that time, and give such addresses as we have, and if it is material, we can have her do that. It seemed to me the mere number of men who worked in the plant is immaterial. If my friend's point is he wants to show how many men were employed who lived on the New York side, I have not any objection to that. 4088

The Court: That seems to be what he wants.

Mr. Englar: I am willing to get that out. Perhaps this lady can do that in one day.

The Court: Do you want the cards, or wouldn't you be satisfied to let us examine whatever documents she has, and then go on the stand and testify as to that examination?

Mr. Axtell: Yes. I thought, reliably, that they had prepared a list for this insurance company, for Mr. Garber, and that 4089
there were 145 people shown to be residing in New York at that time, or steady employees riding at that time. That may be wrong, or a rumor.

Mr. Englar: We prepared no list whatever. It was prepared by the men from the insurance company, not by us, and apparently not by the man who was here.

Mr. Axtell: Pelissier, a time clerk em-

4090 ployed there one time, told us he prepared the list.

Mr. Englar: He is mistaken. I think the insurance man prepared his own list.

The Court: My understanding is Mr. Axtell will be satisfied to have the secretary examine these documents and then go on the witness stand and give such information as he may wish to draw out.

Mr. Englar: Can we first get some one thing settled? You want to know how many men the company employed at what

4091 period?

Mr. Axtell: The number that were employed the week prior to the accident, that lived in New York.

Mr. Englar: All right.

Mr. Axtell: Then we want the total number employed in the plant on all kinds of work for that week, and any corresponding week in December, of six years before.

Mr. Englar: I do not know whether we can give you six years before.

Mr. Axtell: Whatever statistics you have.

4092 The Court: I do not think the number of men employed six years before will be helpful to me, and the possibilities are I would not receive it.

Mr. Englar: I will get the young lady started on that one job. I think that will be enough to keep her busy all day.

Mr. Axtell: If there are place cards or duplicate records for these men to return Monday, I should like to have one or two of those as samples. I want to show notice.

FRANCIS MULHEARN, called as a witness on behalf of the claimants, being duly sworn, testified as follows: 4093

Direct examination by Mr. Axtell:

Q. You are a licensed officer? A. Yes, sir.

Q. Were you first officer and chief mate of the Buffalo on the 20th of December, 1926? A. I was.

Q. And did you pick up some men from the "Linseed King"? A. Yes, sir.

Q. Relate the circumstances. A. On the morning of the 20th, as I was coming down the hill, I heard some crying, and I did not know just what it was, and when I got nearer it came more clear, 4094
and when I got down there on the boat the other men on the boat said to me, "Frank, can you get this boat out?" It was pretty well congested around there——

Q. With what? A. Flood tide, loaded boats, loaded during the night, and day previous, and it took me a little time to get her out. Finally we got her out.

Q. What pier were you at? A. At the Edgewater Coal Company, Edgewater, New Jersey.

Q. You live near there, I take it? A. No, I do not live there. I work there. 4095

Q. What did you mean by saying, coming down the hill? A. I live in Union City, and have to take a bus to where I get off, and walk down the hill to the coal dock. When I got out there I saw the ice coming up the river with men standing on it. I headed for one of the ice cakes and I figured if I got too close to the ice cake I might split it by the ice contacting with the bow, so I spied the launch and I went over to the launch.

Q. You mean the "Linseed King"? A. Yes, sir.

4096 Q. How much of her was out of water? A. A couple of feet out of water; her upper deck and pilothouse.

Q. One corner was out of water? A. No, the whole length of the boat, submerged to the pilothouse, a little past the windows, as near as I can recall.

Q. How many men were hanging on to her? They were hanging on, weren't they? A. Hanging on the sides and floating in the water, hanging on the sides waiting to be rescued.

Q. How many were there? A. I could not tell
4097 how many were there; due to the excitement of getting the men out of the river I did not take notice how many were on the boat.

Q. About how many? A. I would not dare say how many. I would not be telling the truth if I said 9 or 10——

Q. Did you have a crew on your boat? A. Yes, sir.

Q. How many? A. Five men.

Q. Did you pull right alongside the "Linseed King"? A. We got near enough, as the tide was coming up we got a little line and tied it to the rail and pulled it towards us to get the men; we
4098 had pulled up other men from different places.

Q. Before that? A. After we had taken some men off, after we got some men off the "Linseed King," we might have got some off the ice.

Q. How many did you get off the ice? A. I think three. All told I think there were 20, we picked up altogether.

Q. Where did you take them? A. 129th Street.

Q. Did ambulances come and get them? A. We went out and called the police and the police went and got the ambulance.

Q. What were the conditions of these men? A. Pretty well exhausted. 4099

Q. Very cold? A. Very cold.

Q. What color were they? A. Some were colored and some were white. The color of the men?

Q. Yes. A. Kind of white looking.

Q. Even the colored men were white that day, weren't they? A. No, I would not say that.

Q. Pretty well frozen and bleached out? A. Yes, sir. I do not know how long the men were in the water when I got them.

Q. I am judging from the photographs. Did you see ice around there? A. I saw ice that morning. 4100

Q. Some pretty good sized cakes of ice? A. Yes.

Q. Big enough so one or two men could float on them and stand on them? A. Yes, sir; they were big enough for that.

Q. What was your boat doing Sunday, the day before? A. Working around the coal dumper.

Q. Were you working? A. No, sir, that was my day off.

Q. Were you on Saturday? A. Yes, sir.

Q. Were you on all the rest of the week before that? A. I was on all the rest of the week before that. 4101

Q. And the week before that? A. Yes, sir.

Q. Was this the first big flow of ice of the season? A. That was the biggest I saw yet.

Q. Had there been very much ice in the river before that? A. Not that I recall. I do not recall any ice being in the river before that. There might be, I could not say for sure.

Q. Ice would not bother your boat much, I suppose? A. Not very much, unless it was too heavy.

4102 Q. The ice they had that day would not bother your boat? A. I do not know; I do not think it would.

Q. Except for the "Linseed King" disaster, or something like that, to fix it in your mind, you would not at this time particularly recall whether there was ice that day or not, would you? A. I would not say that. I saw the ice that day.

Mr. Englar: I think that is leading. The witness said he did not remember ice before this, and my friend is trying to show his memory is defective.

4103

Q. Was that an extraordinary flow of ice for the Hudson River? A. I would not say.

Q. Just what you ordinarily have? A. Yes; sometimes, according to the weather, if it is heavy cold weather, when the ice comes down the river it is thick and heavy.

Q. You have ice every winter? A. Pretty near every winter, unless it is an open winter.

Q. We have not had any yet this year, have we? A. Just a little bit, nothing to amount to anything.

4104 Q. Not as much as that day? A. No.

Q. Is your boat metal-sheathed or wood? A. Wooden hull with sheathing on her.

Q. Do you carry any kind of ice protection? A. No.

Q. How thick is the sheating on your boat, the wood? A. I do not know; I did not take time to measure it. Maybe a half inch thick or three-quarters.

Q. The metal? A. Yes, sir.

Q. How thick is the wood underneath that? A.

That is a question I cannot answer. It might be 4 inches thick or it might be 8 inches thick. 4105

Q. 3 or 4 inches thick? A. (No answer.)

Cross examination by Mr. Englar:

Q. I would like to get a little more definitely just how the "Linseed King" was riding when you came up to her; what parts of her were out of the water? A. The parts of her out of the water was her upper deck, and just over the pilothouse.

Q. When you say upper deck, you mean the roof of the cabin? A. Yes, sir.

Q. Was the entire roof of the cabin out of water? A. Out of water, as far as I saw through my excitement. 4106

Q. How far out of the water was it? A. I could not say how far she was out of water.

Q. Just your best recollection. A. You know yourself the way the conditions were.

By the Court:

Q. Was the water washing over it? A. The water was not washing over it.

By Mr. Englar: 4107

Q. Would you say it was out of the water a foot or two feet? A. About a half a foot, probably.

Q. Was either end of it more out of water than the other? A. No; she was just even.

Q. Riding even? A. Riding even, yes, sir.

Q. I gathered from what you said some of the men were in the water hanging on the side of the boat, and some on top of her? A. As I remember

4108 some were hanging on and some men were on the after deck of the boat.

Q. On the after deck? A. Yes, sir.

Q. Those men on the after deck, how much of their bodies was out of water? A. Full size. They were standing up. Those hanging on, they were partly up to their waist hanging on to the boat.

JOHN F. WINTERS, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

4109 Direct examination by Mr. Axtell:

Q. Are you from the Police Department? A. Yes, sir.

Q. Which part of it? A. Detective Bureau.

Q. Have you produced certain records from the 12th Precinct? A. I have.

Q. Are these all different? Just look at those three blue covers, are those separate records? A. Those are D.D. records, they are called; D.D. 5. There is a white record made, D.D. 4, a preliminary record, and after thorough investigation is

4110 made, those D.D. 5's are made.

Q. These are made? A. Those are the 5's.

Q. These are not duplicates that you have there, are they, that is, they are all separate records? A. Yes, sir.

Q. They are separate? A. Yes, sir.

Q. Have you any extra copies so we can have that set, or have a set of them made? A. No, sir.

Q. Those are originals, are they? A. Yes, sir.

Q. Those relate to the men on the "Linseed

King" when she went down? A. From what I 4111
see.

Mr. Englar: Before you question him about them, can I see what they are?

The Court: Yes, and if you can make some concession, please do so.

Mr. Axtell: I understand there are five or six persons on this list not shown on the pink cards; this being a final record it would form some proof of the missing persons. If I cannot get it this way I will have to call all the widows and survivors as to the bodies that were not found. 4112

Mr. Englar: I am willing to make any reasonable concession, but here is a long report by the Police Department telling all about this disaster, and I should like an opportunity to examine it before I let it go in the record.

Mr. Axtell: May we do this, if the officer can get authority, have these photoprinted as we did the others, and let him take them back, and the Court can pass on the other question later?

The Court: I have not any objection to that, but even that perhaps makes it some- 4113
what troublesome when the Court examines the case. If all you want are the names of these men——

Mr. Englar: I think they are already in the record.

Mr. Axtell: Some of them are. I understand there are six or seven not in the record.

The Court: Suppose we allow counsel to examine these records now, and he will

4114 make a concession, rather than have these resumes of the catastrophe set forth again.

Mr. Englar: I suggest you have them photostated. I cannot examine them in the middle of the trial.

Mr. Axtell: I cannot either.

Q. Will you go with a man from our office to the photoprint office so copies of these can be made? I might inform you a man yesterday consented to that at the Police Station in two other instances of pink cards, and we have photoprinted those, and he said, subject to the direction of
4115 the Court, it was all right; if you want to take my word for it; if not, you may call up.

The Court: Do just as you think you should do.

The Witness: I would rather call up, your Honor.

The Court: All right, tell them all the counsel wish to do is to take a photographic copy, and that has been done in other cases, and I am inclined to think it ought to be permitted in this case.

4116 (Witness excused.)

WILLIAM WARD, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. Are you a police officer too? A. No, sir, I am employed by the City as head overseer at the City Morgue.

Q. You have come here in response to a subpoena and brought the records of the City Morgue with you? A. I did. 4117

Q. Can you refer to the bodies connected with the "Linseed King" disaster? A. Some of them.

Q. You have the original record there? A. The original record of December 20, 1926.

Q. Will you read from that record the names of the bodies and description, if any, that is given, that were brought there?

Mr. Englar: Just a moment, your Honor.

The Court: Does not all this go to a Commissioner in case I should find that the petitioner is not entitled to limit liability? 4118

Mr. Axtell: Yes, sir, but the question of the number of bodies is in dispute.

Mr. Englar: I do not think there is a dispute as to the number of bodies.

Mr. Axtell: There are other bodies picked up since December 20th.

Mr. Englar: You cannot prove by this man they were on the "Linseed King".

Mr. Axtell: We can from whatever record we have. 4119

Mr. Englar: I do not see any use of going over all the bodies taken out of the "Linseed King". We have been over that.

Q. How many have you got there for the 20th? A. 30.

Mr. Axtell: Those are probably the ones we have a record of.

4120 Q. Do you know whether all of the bodies picked up at 129th Street, or 254th Street, were brought to the Morgue before they were identified or taken away? A. All bodies picked up at 125th Street are taken direct to the Morgue.

Q. How many were picked up at 125th Street? A. Our records show 30.

Q. Your records do not show some of them were taken from the boat at 254th Street? A. No.

Q. Will you look and see and be sure? I might say for your information we have information to the effect 27 were taken from the boat at 254th
4121 Street, and three bodies were taken from 125th Street. A. Our records compare with those of the Police Department, that is where we get the records from.

Q. Were there any other bodies of the "Linseed King" picked up since the disaster, to your knowledge? A. Not to my knowledge.

Q. Is there anything there in the records to indicate they were in the "Linseed King" disaster? A. No, sir.

Q. Have you looked in the records subsequent to that? A. No.

Q. Who, in the City of New York, would have
4122 records of other bodies? A. The Chief Medical Examiner.

Q. Who is that? A. Dr. Norris.

Q. Anybody else who would have records? A. The Police and the District Attorney.

Q. At headquarters? A. Yes, sir.

Q. To check this thing finally, will you give the last name of each body you have for the 20th? A. Hartman.

Q. Give the 30. A. You asked for the last name.

Q. I want the surname. I want to find out if the bodies— A. To begin with, all these men came in as unknown. 4123

Q. I understand. Give us the record you have there. A. Abraham Burke, Harold Stevenson, Joseph Bassett, Joseph Hamilton, George Sims, Ura A. Pusey, Thomas Connolly, David Hicks, Alazion Morales, Balfour Curriate, Anthony W. McGoldrick, Thomas Brennan, Frank Eberle, Arthur Johnson, unknown man, Samuel Daniel.

Q. Is that another one you mentioned, an unknown man? A. No. 15 was an unknown man, never identified David Clark, Roy Amslow, Ernest Boyer, Joseph Dubranski; Marcus Gonzales; George Nameth; unknown man—— 4124

The Court: Does that compare with what you have so far? Is there any use of going through this?

Mr. Axtell: It will give us a check.

A. (Continuing.) Juan Fernandez; James Alexander; Carl Bostram; Louis Herrera; Domingo Meesa; Paul Saul, and John Hartman.

Q. That is all? A. That is all.

4125

JAMES TROTTER, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. How old are you, Mr. Trotter? A. 27 years.

Q. How tall are you? A. A shade under 6 feet.

Q. How much do you weigh? A. I weigh now 214 pounds.

4126 Q. How much did you weigh last year in December? A. 200.

Q. Were you on the "Linseed King"? A. I was.

Q. Had you worked for Spencer Kellogg Sons before that? A. Yes, I worked for them since August.

Q. What doing? A. I was employed in the cake room department.

Q. Did you sometimes ride on that boat? A. I always rode on it.

Q. Did you know this man Burns, the husband of the lady sitting back here, who testified? A.
4127 Yes, I did.

Q. Was he on the boat that morning? A. Yes, he was.

Q. You knew him well? A. He worked in the same place with me.

Q. A friend of yours? A. Yes, we got to be friends.

Q. How big a man was he?

Mr. Axtell: This is one of the bodies that was never found.

A. About my height.

4128 Q. About 6 feet? A. Yes, sir.

Q. A strong, big fellow? A. Fairly strong, I should say.

Q. Healthy? A. Yes, sir.

Q. You are sure he was on the boat that morning? A. Yes, sir.

Q. What part of the boat were you on? A. Standing on the bottom of the boat, just below the platform where the captain stands.

Q. Toward the front? A. Yes, sir.

Q. Anybody near you? A. Not that I know of. Do you mean that I remember? 4129

Q. Were there any standing close to you? A. There were people close to me, naturally.

Q. Naturally. Was that the usual condition? A. Always.

Q. Always crowded? A. Whenever there was a seed ship in.

Q. How many seed ships were in that year while you were there since August? A. I could not say. I never kept track of it, and we work by shifts. It was not every shift I went on that it was crowded.

Q. How many times do you suppose you had ridden when it was crowded like that? A. About a half a dozen times at the most. 4130

Q. And you landed on the dock over there? A. Sure I did.

Q. Do you know Mr. McHale? A. I know his features, but do not know his name.

Q. Do you remember him? Did he have anything to do with your work? A. No.

Q. Do you know Mr. Balz? A. I don't know their names.

Q. Do you know Mr. Stover? A. He is the manager of the works. 4131

Q. Did you ever see him there? A. Several times.

Q. Does he ever go out on the dock? A. Yes, sir, I saw him several times at the end of the dock.

Q. Did you ever see him on the end of the dock when you landed there in the morning? A. Yes, sir; in the afternoon I used to see him. I did not see him in the morning.

Q. Did you ever have a big load like that going

4132 back to New York from New Jersey? A. Not that I remember.

Q. How big a load did you have going back from New Jersey to New York, how many did you have? A. We never had a full load that I can remember of.

Q. What is a full load? A. As many men, I guess, as the boat used to take.

Q. Do you mean as many as she could get on? A. As many as went on. I do not know, as many as she could get on.

Q. Was there any room for anybody else on
4133 that morning of the accident? A. Yes, there was.

Q. Where? A. Near the doors.

Q. Out on the deck? A. No, inside.

Q. Weren't there people standing on the step? A. No.

Q. You heard testimony here to that effect, didn't you, from other men in the case? A. I did not hear about it. I was near the step.

Q. You did not hear anybody say that? A. No.

Q. How many days were you in court? A. Yesterday was the first time.

4134 Q. Are you working for the company now? A. No.

Q. Where do you work now? A. Not working at present.

Q. Where did you work last? A. Baker & Kaplan.

Q. Where were you born? A. Domingo, British West Indies.

Q. How did you get out of the boat that morning? A. I got out through the door.

Q. Where do you say Burns was standing with

relation to you? A. He was not standing near me, but I saw him on the dock that morning before I entered the boat. I saw him on the dock. I did not see him in the boat, but I knew he was going to work just the same. 4135

Q. Do you remember making an affidavit for Mrs. Burns to enable her to collect insurance, about $500? A. Yes, I do.

Q. Did you not say in that affidavit that Roberts Burns was on the boat that morning? A. I might have said it; I won't say I did not.

Q. Do you remember being down at my office one time about it? A. No, sir, I have never been there. You left a card in my house to call to your office, but I never came to your office or spoke to you. 4136

Q. You talked on the telephone to me, didn't you? A. No, I did not.

Q. Who brought the affidavit to you? A. Mrs. Burns herself.

Q. The facts stated in that affidavit were true? A. I guess they must have been true, otherwise I would not sign my name to it.

Mr. Englar: I know your Honor is taking a very liberal view with respect to examination, but it seems to me he has called the witness and is confronting him with an affidavit signed under his request to contradict him. 4137

The Court: It might be for the purpose of refreshing his recollection, but he does not deny Burns was on the boat.

Q. How did you get off the boat? A. Through the door.

4138 Q. Which side? A. The left side, the port side.

Q. Anybody in front of you? A. You mean that got off in front of me? There was nobody between me and the door.

Q. You were the first out? A. No, I was not.

Q. Who was? A. I do not know, but I know perfectly well I was not the first out of the door.

Q. What did you do when you got out? A. I left the boat.

Q. Jumped overboard? A. Yes, sir.

Q. What did you do that for? A. What was I
4139 to do? Get jammed in a wild rush?

Q. You got out in order to give room for the rest to get out? A. Yes, sir.

Q. And all the men did that, they got out as fast as they could? A. They tried to; worst for themselves.

Q. How many did you see come out? A. A good many.

Q. How many? A. I could not say, but I saw a good many in the water.

Q. How many do you think? A. It would be hard to tell you, because in a morning of that kind I could not say how many men were in the water.

4140 Q. Did you see any men in the water that did not get saved? A. Why, sure.

Q. How many, about, your best judgment? A. The last I can remember, when the tugboat "Buffalo" came, they sent me a raft, and I sent the raft to another man I saw nearby helpless, and that is one man I saw that went.

Q. He slipped in? A. He went down.

Q. Do you know who he was? A. No.

Q. So far as you know, his body has never been

recovered? A. I could not say whether that body 4141
was recovered or not.

Q. Did you see others slip down? A. I saw one man fighting with a piece of ice and so far as I know, I don't think his body has been found, and that was a man named Samuels.

Q. You remember him? A. I know him.

Q. There were 28 men saved, that is, picked up out there at that time. How many more than that do you think you saw struggling around in the ice and water? A. I could not tell you one word how many I saw. I told you I saw several men, and that is all I can say. I could not say 4142
approximately how many men there were.

Q. Did you see any other than these two go down? A. Not that I can remember.

Q. One man said he saw five or six together. A. He might have seen them, but I did not.

Q. I noticed you were laughing when you heard that remark; you were sitting in the back of the room. Was there something funny about that? A. I could not tell you whether that was funny.

Q. Why did you laugh? A. I can laugh whenever I choose to.

Q. Apparently. A. Not apparently; I guess so.

Q. Did it seem funny to you that 5 or 6 men 4143
went down together? A. I do not know that that is anything concerning you right now.

Q. Have you been talking to somebody about this case before you came to court here? A. No.

Q. As to what you would testify to? A. As far as what, do you mean?

Q. Has anybody been talking to you, lawyers on either side? A. When do you mean? Many lawyers came to me.

4144 Q. Did any lawyers for Spencer Kellogg & Sons talk to you? A. Yes, sir.

Q. You talked to them? A. Yes, sir.

Q. Did you make a statement for them? A. Yes, sir.

Q. An affidavit? A. Yes, sir.

Mr. Axtell: I ask for the production of it.

Mr. Englar: I asked the same thing, Mr. Axtell, but Mr. Hagen cannot find it now.

4145 Q. Are you losing your time while coming here? A. I guess my time is worth something.

Q. Are you sore at us because we subpoenaed you? A. I am not sore, because it is a rule of the Court, I suppose.

Q. You are peeved, aren't you? A. No, but I want to know how I stand.

Mr. Gordon: In Mr. Jayne's absence, may I ask a few questions?

The Court: Yes.

By Mr. Gordon:

4146 Q. Did you know Alfred Roberts? A. Yes, he was a chauffeur or something of the kind at the plant.

Q. Did you see him on board the boat that morning? A. I could not swear right now if I remember seeing him on the boat, but he used to be on the boat generally.

Q. Did you see him that morning? A. I could not say positively.

Q. Did you see him in the water after the launch was about to sink? A. I could not tell.

Q. Didn't you inquire for him while you were 4147
in the hospital? A. I cannot remember. I might have.

Q. You knew him well? A. I knew Roberts, a short fellow.

Q. Are you sure you did not see him on the boat? A. I say I cannot swear that now.

Q. Did you see Henry McCann? A. I don't know him.

By Mr. Axtell:

Q. Do you know the names of any others whose 4148
names you have not mentioned that you saw that morning on the boat? A. Yes.

Q. Give us as many as you remember. A. I saw Balfour Corriette.

Q. Was he a colored or white man? A. A colored man.

Q. Do you know where he came from? A. Yes, sir, from Domingo.

Q. Do you know anybody else? A. I knew their faces, but I do not know their names.

Q. You have not filed any claim for damages? A. No, I have not.

Q. Did they settle with you? A. What do you 4149
mean, settle?

Q. Did they pay you money, or promise you anything? A. They did not make any promise. I worked for them and they paid me, that is all.

Cross examination by Mr. Englar:

Q. You made a statement in the Magistrate's Court, gave some testimony, didn't you? A. I did.

4150 Q. Is this part of your testimony at that time: "Q. What time did you get on the dock? A. About 6:25. Q. 6:25? A. Yes. Q. When you arrived there could you state how many men were there, to the best of your opinion how many? A. Well, I remember saying about 60 or 70 at the time I gave my statement at the hospital." Is that right? A. Yes, sir, that is what I told the District Attorney.

Q. And that is correct? A. As far as I can remember.

4151 Re-direct examination by Mr. Axtell:

Q. Were you questioned by Mr. Hagen, the company lawyer, about that point too? A. I guess I must have been; I cannot say yes right now.

Q. How many men were left on the dock? A. About 20 or 30 men, I remember saying, if I am not mistaken.

Q. You did not count the men on the boat that morning? A. I could not check them.

Q. Did you ever sit on the seats when you rode there? A. I never sat on the boat. I was either near the captain or behind him, to which he can

4152 certify.

Q. How many men besides yourself were usually standing up? A. I could not say.

Q. How many men could sit down in those seats? A. That boat I believe has seating capacity of about 40, that means 20 on a side.

Q. Did you ever count them? A. I never counted them, but I think that is what it holds.

Q. But you always stood up? A. I always stood in the boat.

Re-cross examinationby Mr. Englar: 4153

Q. I want to read you another passage from your testimony in the Magistrate's Count: "Q. When you got on the launch that morning as she started to pull away from the dock in your opinion how many men would you say were on that launch? A. As I said before, 60 to 70." Is that right? A. Yes.

Q. And you think that is correct? A. I think that is correct. That is my estimation that I gave.

4154

LAURA RAWLINS, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. You are how old, madam?. A. 35—36.

Q. Who was your husband? A. Clifford Rawlins.

Q. When were you married to him? A. The 14th of November, 1909.

Q. You have a child? A. Yes, sir.

4155

Q. Did your husband work for Spencer Kellogg Sons? A. Yes, sir.

Q. For how long before his death? A. I could not answer the exact time.

Q. About? A. About three months.

Q. Do you know what he was doing over there? A. No, I do not know what he was doing.

Q. Do you know whether he rode on the "Linseed King" sometimes? A. Yes, sir.

Q. He probably told you so? A. Yes, sir; he

4156 rode on the "Linseed King", he told me, and I have men who saw him when he went down.

Q. Has his body ever been found, to your knowledge? A. No, his body has never been found.

Q. How big a man was he? A. He was about 6 feet.

Q. More than 6 feet, very tall? A. Very tall and broad.

Q. How much did he weigh? A. I could not tell you how much he weighed now.

Q. A taller man than I am? A. Yes, sir.

4157 Mr. Axtell: I am 5 feet 11 inches.

Q. Did you see him the morning of December 20th? A. No, I did not see him.

Q. Did you see him before he went to work? A. No, I did not, before he went to work, but I have a cousin who works there, and he saw him.

Q. Who is your cousin? A. Rupert Taylor.

Q. Is he here? A. No, he is not here now.

Q. He was on the boat with him? A. No, he was not on the boat, he works nights, and he said he would not go on the boat because it was

4158 overloaded.

Q. Is there anybody around here who knows your husband was on the boat? A. Mr. McHale knows my husband worked there.

(Witness excused.)

Mr. Axtell: I have now a witness to produce the log of the Hercules.

ROBERT OLIVER, JR., recalled. 4159

Direct examination by Mr. Axtell:

Q. I want the log of the "Hercules" for December, 1926; have you that? A. This is a logbook. It is not the boat's log. It is a logbook, and he makes his entries in this book.

By the Court:

Q. Original entries? A. Yes, sir.

Q. And copies it to the ship's log? A. He copies it to the log that he turns in to the office, 4160
such as you see here, that is the work done. This the captain retains.

Mr. Axtell: I want it left here. There is a witness who was subpoenaed two or three days ago, and is subpoenaed to come here today, who was on the "Hercules" in December, and I believe he has some information.

The Court: About the condition of the river?

Mr. Axtell: Yes, sir, and he said he could not testify without the log. 4161

The Witness: He telephoned me yesterday. I told him I would not let him have it. I never let the logs out unless on order of the Court.

Mr. Axtell: I asked him to go and look at the log.

The Court: Will it remain here a few days?

The Witness: Yes.

The Court: Who will return it?

4162 Mr. Axtell: I will return it.

Mr. Englar: Will this witness be here this afternoon?

Mr. Axtell: This afternoon?

Mr. Englar: Would it be inconvenient for you to be here this afternoon, Mr. Oliver?

The Witness: No; but Capt. Noble is the man.

Mr. Englar: If Mr. Oliver can stay here, I wish he would do so.

Mr. Axtell: He is the manager of 30 tugs.

4163 Mr. Englar: Will you remain, Mr. Oliver?

The Witness: I can remain.

Mr. Axtell: I cannot guarantee the witness will be here this afternoon.

Mr. Englar: Well, if Mr. Oliver is willing.

AUGUST RIETZKE, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

4164 Direct examination by Mr. Axtell:

Q. What is your occupation? A. Boat builder.

Q. How old are you? A. 42.

Q. Where is your place of business? A. Edgewater.

Q. How near the Spencer Kellogg plant? A. About a mile.

Q. Are you right on the water? A. Yes, sir.

Q. You are above the plant, aren't you? A. Yes, sir.

Q. Do you own your own place there? A. Yes, 4165
sir.

Q. How many acres of land have you there? A. I have 350 shore front by whatever that goes up to the water, up to 1500 feet from the pier line.

Q. You have a boat building plant? A. Yes, sir.

Q. During the past years you have built boats? A. Yes, sir.

Q. How many boats have you built? A. I have built new boats; in the last several years about a dozen, and still have some under construction.

Q. You employ quite a number of carpenters? 4166
A. I do.

Q. What are the sizes of the boats you are building? A. New boats range up to 56 feet completed, and up to 85 feet under construction.

Q. You have seen this boat, the "Linseed King", haven't you? A. I have seen it.

Q. Did you see these photographs this morning? A. Yes, sir.

Mr. Axtell: Referring to various exhibits.

Q. Now, there is evidence in this case that 4167
the boat had had the top raised up and windows like this one, Exhibit I, put in, that is, assuming there was glass in here once, wire mesh glass windows had been put all around the boat, leaving two exits in the front that opened outward, which were about 22 inches wide——

Mr. Axtell: That is my recollection.

Mr. Englar: Yes.

Q. (Continuing.) And that there was an exit

4168 in the rear in front of some steps, an exit that opened inward, the doors opened inward anyway, that the windows were of the size indicated here; that four of them, as I recall it——

Mr. Axtell: Were there four?

Mr. Englar: On each side there were four like that and five of the others.

Q. (Continuing.) That on each side there were four windows like this with hinges on the bottom that opened down, with a chain about 14 inches at the top fastened by a staple and chain,
4169 as you see it; that the other windows, of which there were five on each side, were the same size, and had a button at the top and at the bottom which you turned with your fingers; that one of the windows had a button attached to the frame of the window itself to pull it out, but that the others did not; the boat was 45 feet long and 10 foot beam, and she had a depth of 4 feet, a draft of one foot 10 inches——

Mr. Englar: I think her depth was 4 feet six inches.

4170 Mr. Axtell: Did your man say 4 feet 6?

Mr. Englar: That is my recollection.

Q. (Continuing.) And she had 86 life preservers, some of which were up in the top of the cabin, most of which were up there under slats, I suppose in the way that life preservers are usually carried when secured in the top like that; that at the back of the boat on the ends of the seats there were piles of life preservers similar to the ones we have in the court room, on top of each other, filling the seat toward the ceiling;

that the space came in the middle and there was a seating capacity of about 33 to 35 men sitting on the seats on either side; that the engine was a little aft of amidship; and you may assume her measurements and seating arrangement was as indicated on this blue print—— 4171

Mr. Axtell: What exhibit is this? There is no number on it. Is this an extra one?

Mr. Matteson: There is an extra one.

Mr. Axtell: This must be the extra one.

Q. (Continuing.) I am showing you a blue print of the boat. Can you give us an opinion as a boat builder whether or not that boat was of sufficient size and proper construction and design to carry 86 people in the Hudson River in December of any year, assuming further she had no watertight bulkhead, nor any air buoyancy tanks? 4172

The Court: Did you say 86 life preservers?

Mr. Axtell: 86 life preservers.

Mr. Englar: I object. The witness is asked to decide the question that is before the Court. 4173

Mr. Axtell: That is what Mr. Barrett was asked.

Mr. Englar: He was asked about the buoyancy and capacity of the boat. I do not recall that he was asked such a question as that.

Mr. Axtell: He was asked if the boat was seaworthy and staunch. That is what you brought him here for.

4174 Mr. Englar: I did not ask how many men she carried, except on the matter of buoyancy. I asked the draft and how much she would go down.

The Court: I do not think if the witness gives his opinion he is deciding the contest. This is an expert opinion based on his familiarity with construction of this kind.

Q. Do you know the question? I asked your opinion of the sufficiency of this boat on the facts stated? A. What capacity?

4175 Q. I said 86. A. The boat was 45 feet long, 10 feet beam?

Q. Yes. A. What is her depth from the main beam to top of keel?

(Somebody at Mr. Axtell's table said 5 to the keel.)

The Witness: Which is called the depth. The depth is determined by dimensions underneath the deck to the top of the keel inside. If you want me to make a statement, I must have figures.

4176 The Court: Then I understand from what you state you cannot give an opinion based on the question as framed.

Mr. Axtell: I gave you those facts.

A. The size is 45 feet long, 10 foot beam, 5 foot depth.

Q. (Indicating on the blue print.) The cabin is 26 feet long, and these are her seats on which life preservers on the rear end are piled, here are the steps, there is the door opened inward, here are the places where the windows are in

the side, here are her front exits here, the pilot-house is forward, here is the engine; the evidence is 45 men, or about that; could sit down, 17 or so on each side, and the rest of them, some 50, would be required to stand up in the middle space of which there is 63 square feet left exclusive of the place where the men are sitting; could the men stand there? A. No, sir. 4177

Q. Is the boat constructed properly in other respects—how about the windows? A. As far as the windows are concerned, for light and air, all right, but if meant to give men exits in case of accidents, they are not. These boats built in the river for that purpose have no inside capacity. They are kept on deck with the exception of having room for one or two people going below for necessary things. 4178

Q. You mean boats used in going across the river are open? A. Not open boats. Deck boats with awnings over them, and only a small cabin for whatever a cabin might be needed for.

Q. In other words, the people ride outdoors? A. Yes, sir.

Q. Where are the life preservers carried? A. Generally on top of the small cabin or on top of the awning. 4179

Q. How large a boat would be required to carry 86 people, as a fair load? A. 86 people as a safe load, it would be about 80 by 20.

Q. You are speaking of length? A. Length and beam. 60 people would be 60 by 15; 40 people would be 45 by 12.

Q. You would say the capacity of this 45-foot boat, beam 10 feet, would be what? A. Safe carrying capacity 35 people, in good weather 40.

Q. Is this boat narrower or longer than usual?

4180 A. For that purpose she is too narrow for her length.

Q. By lengthening her length 10 feet with the same beam, she is in bad proportion? A. In proportion not right.

Q. What should be the beam of a 45-foot boat used for such purpose? A. 15 to 16 feet.

Q. There is no question in your mind about that? A. No; that is the boats I have used for that purpose right along, and I have not used any other for that purpose.

Q. And you would not put windows like that
4181 in a boat like that if you were to carry people? A. No.

The Court: It does not make so much difference what he would do. That is not the test.

Q. Is there a practice or custom of putting air tanks or bulkheads in boats of this character? A. A boat should have at least a collision bulkhead if it hasn't any more, and I have put in a good many.

Q. Collision bulkheads? A. Yes, which is in
4182 the forward end.

Q. A good many boats are run without them? A. There may be some, but I do not know——

Q. You know of many boats that have them? A. (Continuing.) Small boats used for pleasure, but none that I know of used for that purpose, unless there are tanks suspended under the decks.

Q. Do you know of any other boats used for carrying people across the Hudson? A. Not exactly across the Hudson, but carrying people around the Hudson.

Q. What, parties? A. Boats used to take parties to different places, and boats used, not so much now any more, but for instance, I have carried many people on boats from shore to ships for workmen during the war. 4183

Q. You have operated them yourself? A. Yes, sir.

Q. How were they constructed? A. As I explained, I knocked the cabin off, decked them over, and just left the cabin for protection of the engine, so that I had the boat as I explained.

Q. I show you Exhibit MM: that is a picture of the "Linseed King" showing a gash in her starboard bow. Is metal sheathing of any importance in vessels of this sort if they are going to run in the ice? A. Yes, sir. 4184

Q. Is there a custom or practice of using it? A. Yes, sir.

Q. Will you please inform the Court what you observed is the custom or practice in that respect? A. If a boat is used during the winter, or used for any hard work, and needed sheathing, of course first you determine what it is used for, what the purpose is the boat is to be used for, and then determine as to the sheathing, what should be put on the boat. 4185

Q. Having in mind the lines of this boat, and assuming that this cut here in the right side is about one inch thick, one inch up and down, 22 inches long, parts going clear through the plank, can you say with reasonable certainty whether a boat of her lines, loaded with a capacity of 86, going through the Hudson River, that there is ice, some thin, some thick, some frozen in clods, some not so thick, might have caused that gash? A. Yes, if you run a boat without any sheathing

4186 on you would not run more than half a mile and you would cut through the planks.

Q. You observed such conditions? A. I have done it myself. I sank quite a few boats myself. I sank a boat three times that way myself.

Q. Would it be necessary to bring the sheathing above the line? A. The sheathing should be at least a foot above the load water line; when the boat is completely loaded, the sheathing should be up one foot higher, for the momentum of the boat would cause the water to rise, would raise the water on the bow from what it would be laying still.

4187 Q. If you loaded the boat within 8 inches of the water on her lowest point, and 12 or 15 inches at her stem, that would mean you would have to bring your sheathing practically to the gunwale? A. That is what you would have to do; it is a fact you cannot deny. If the boat is in momentum the water will climb on the bow, known as the way, and naturally the ice would go through, and there is——

Q. You expect the waves will lift the ice at times? A. All the time the ice will tend to stay on top of the water there.

4188 Q. Is there more or less commotion in the Hudson River all the time? A. Not there, except on stormy days, or when you get in the swell of the ferryboats; otherwise that part of the river is very smooth, but no matter how smooth the river is, the momentum of the boat going through the water will raise the water on its bow about that much.

Q. Would a vessel roll some, and that would bring the side of the boat lower in the water? A. The vessel more or less rolls, and there is more or less commotion.

Q. And you must make an allowance for that in putting on sheathing? A. Right. 4189

Q. What do you say about the stability of a V-shaped bottom boat as compared with a boat with a sloping bilge? A. The stability all depends on where the weight is placed.

Q. Supposing there are men standing up, men averaging 5 to 6 feet high. A. Then your center of weight will come so high the boat is liable to topple over.

Q. Apt to be more topheavy? A. Yes, sir.

Q. If you had sand in the bottom of the same weight, that would be more stable? A. That would lower the metacenter. 4190

Q. Do you know whether in building boats and placing life preservers on them, used in carrying passengers, whether there is a custom or practice of allowing sufficient space for the passenger to get his life preserver and put it on and get out? A. Such boats that have no cabin space where people sit inside, the life belts are carried out where people can get them and get out. There are no boats I know of that carry passengers all down below where they are too crowded up to put the life belts on.

Q. You calculate if you carry a life belt the practice or custom is, as I understand it, to allow the passenger room enough to put it on? A. Yes, sir. 4191

Q. There is no use of carrying a thing there that is liable to be useless, is there?

Mr. Englar: I object.

The Court: Let us not argue the case now.

4192 Q. Is there a custom or practice of having air tanks or buoyancy tanks? A. To a certain extent it is compulsory. I do not know to what extent the law requires it, but a good many people put them in in addition to what the law requires for their own safety.

Q. There is a rule requiring them for boats going outside the harbor? A. Yes, but we put some on inside boats too.

Q. These boats licensed to carry passengers around here that do not have them are inside boats? A. Inside boats and compelled to carry a life belt for each person aboard, and accessible.

4193

Cross examination by Mr. Englar:

Q. Will you explain just what the metacenter is of a boat? A. The metacenter is that point at which the weight balances to its water line.

Q. Will you describe it so any competent man taking your description could calculate where it is? A. The only way that can be calculated is you have to form your ordinate, from which you figure your weights, and depending on where your weight stands that is your metacenter. If you put your weight above a certain meter, the meta-

4194 center will rise, where, if it is lower down—the metacenter is nothing but the center of weight.

Q. Is there a formula for calculating that? A. Yes.

Q. What is it? A. From a certain point you figure your weights multiplied by the distance where the weight is located from this line of beginning.

Q. You have not told us where you start to figure. Tell us how you would figure the meta-

center of this boat from the plans? A. I have to show you that on paper. I cannot explain that. That is the way we figure boats. We figure the center of gravity as well as metacenter. That goes in figures. 4195

Q. There is a formula? A. Yes, and that is being added by work through a so-called Stimson multiplier which, without paper and formulas, I could not exactly show you, but whenever I build a boat I figure them.

Q. Can't you tell the formula? A. The formula is, as I say, distance and weight.

Q. Those are the elements that enter into it, but what is the formula? A. The formula is you have your distance, from which you figure your weight. I do not know what you mean by formula. 4196

Q. Can you go and examine a vessel and figure where your metacenter is? A. Yes, if you give me time to figure her weights and distance.

Q. You cannot tell us how to do it? A. Yes, sir, I can tell you how to do it, and show you, if you want to take the trouble to come to my office, and I will tell you how to figure a boat out to the fraction of a pound.

Q. You say the higher you carry the weight the higher your metacenter is? A. Yes, sir. 4197

Q. So if you have your cargo down below the deck your boat is more stable than if you have it on deck? A. Yes, sir.

Q. So if you are carrying people and have them standing 2 or 3 feet below where the deck is, that would be more stable? A. It depends on how many people are standing above the middle line.

Q. If you will listen to the question carefully, if the people stand at a place two or three feet

4198 below the deck, the boat is more stable than if they stand on the deck, isn't it? A. No. The weight remains; the height, whatever the height of the person is, that is comparatively.

Q. If you raise them up you raise the metacenter, you say, but if you lower them down you don't— A. You lower the metacenter with the weight, but if the person stands on the floor, that does not put all the weight there.

Q. It puts it lower than if he stood on the deck? A. Yes, the distance between the height of the floor and the deck.

4199 Q. So a boat where people are standing on a surface below the level of a deck would be more stable than a boat where the same number of people were standing on the deck, isn't that so? A. Yes, to a certain extent, to whatever the difference is between the bottom and the deck.

Q. You say you built about a dozen boats? A. Yes, sir.

Q. What type of boats are they? A. They are just motorboats, cruisers, so-called, motorboats or cruiser dories, raised deck.

Q. How many were dories? A. I think three dories.

4200 Q. What were the others? A. Raised deck cruiser, a couple of bridge deck cruisers, and a couple of deck house cruisers.

Q. Were any of these boats intended to carry workmen back and forth across the river? A. Not the new built boat, only the re-built boat.

Q. You never designed and built a boat for that purpose, did you? A. Yes, I have.

Q. For the purpose of carrying men back and forth across the river? A. Yes, sir.

Q. What boat? A. I have built several; I have to bring you plans and particulars.

Q. How long ago did you build them? A. A 4201
good many years ago.

Q. How many years ago? A. I started in about 1913, and I have got quite a few of them plans and different things, you can see for your information.

Q. Can you give us the names of any of these boats? A. They might have gotten all kinds of names since then. I might remember one or two names.

Q. Do you remember who you built them for? A. Yes, sir, some.

Q. Who? A. I built two boats for Mr. Has- 4202
brook, and another boat for Mr. Barton, and Mr. Sandburg, and Mr. Powell; I do not remember all the names, but that is some of the names I do remember, people that still have the boats.

Q. What service were those boats used for? A. Generally just pleasure boats.

Q. Exactly. I asked you if you built boats to ferry men back and forth across the river? A. Yes, sir.

Q. What were those boats? A. One boat called —I don't know her name now.

Q. Who did you build her for? A. That is for a man who done fishing business. 4203

Q. You built her for a fishing boat? A. To carry parties, to carry men to sea to fish; probably 30 or 40 men to go out to fish, which would be the same as carrying them across the river.

Q. Do you know the name of it? A. I don't know the name. I built her under number.

Q. For whom did you build it? A. Brown or Browns, I don't remember—A. O. W. or A. W. U.

Q. There is no way of identifying that boat? A. I can if I can get hold of my records.

4204 Q. You cannot give the name or number? A. Not without looking up records.

Q. Is she still in the harbor? A. I think she is in Sheepshead Bay.

Q. What were her dimensions? A. 45 by 13 feet 2 over the gunwale.

Q. That is over all? A. Yes, sir.

Q. You said that boat was built to take parties of 40 to 45 men out on fishing trips? A. That is what they generally take.

Q. That is what they generally take on a boat of that size? A. Yes, sir.

4205 Q. Was she a cabin boat? A. No, she was all decked with just a small cabin, all decked over solid with a small cabin and a small house.

Q. She would go outside fishing? A. She goes out fishing when they go down around the Bay, and sometimes they go outside. She was built for outside fishing.

Q. How big was this cabin? A. The cabin was only about 6 feet long.

Q. 6 feet by what? A. By about 8 feet.

Q. And the rest was just open deck? A. No, closed deck, solid deck.

Q. There was nothing that was not roofed over?

4206 A. No.

Q. What sort of exits were there from this cabin? A. There was one hatch aft and one hatch forward into the pilothouse.

Q. What was the size of it? A. 26 inches.

Q. By what? A. 26 by whatever height the house was we figure the width, for size we figure the width.

Q. How high was the top of the house above the deck? A. I think 28 inches.

Q. Were there port holes in the cabin? A. Just two square windows in there.

Q. What was the size of those? A. They only 4207
were small windows to leave air in, sliding windows, about 14 x 20.

Q. These boats that go out fishing and get outside are liable to be caught in bad weather, aren't they? A. Yes, sir.

Q. Don't you think if a boat like that went outside and got caught in a bad spell, with heavy rain, that everybody would crowd into that cabin? A. No, nobody crowds in that cabin. The cabin is not there for anybody to go in. That is only for the engine.

Q. You do not think people will go in the cabin 4208
when they strike bad weather? A. As a rule, they could not get in if they tried.

Q. A good many could get in? A. No, the engine was in there, and there was no room for anybody in there.

Q. Now, you say that you do not think you have ever seen a boat that did not have a collision bulkhead, is that right? A. Small pleasure boats, yes, sir, but not the ones we use for carrying people on.

Q. A boat licensed to carry passengers for hire you think always has a collision bulkhead? A. There may be some that have not, but I do not 4209
know of any.

Q. Have you made any investigation to find out how many of them have? A. No.

Q. Would you be surprised if I told you that of the boats between 15 and 30 tons that are licensed to carry passengers for hire in this port there are only two out of sixteen that have any watertight bulkheads? A. That may be.

Q. Would you be surprised if I told you one of them is right in your yard right now? A.

4210 That may be. A bulkhead is apt not to be tight.

Q. Have you got a boat in your yard now called the "White City"? A. Yes, sir.

Q. Do you remember about her dimensions? A. About 64 by 20.

Q. About how many people do you think she would be fit to carry? A. 65 to 70.

Q. Would you be surprised to know the Local Inspectors have licensed her to carry 90? A. That may be.

Q. Is there any sheathing on the "White City"? A. There has been some on, but that has
4211 been taken off, because the boat has not been used in the winter.

Q. The answer is no? A. There is none on her now.

Q. Have you a boat in your yard called the "Cherady"? A. Yes, sir.

Q. What are her dimensions? A. About 64 by maybe 17; I do not know the exact beam; 17, maybe a little more or less.

Q. Has she any bulkheads? A. Yes, sir, she has partitions, bulkheads.

Q. Watertight bulkheads? A. I do not know if they are watertight, because if a drop goes
4212 through it is not watertight any more.

Q. When you speak of collision bulkhead, do you mean one that is not watertight? A. Supposed to be watertight.

Q. Is there a bulkhead in this "Cherady" supposed to be watertight? A. Two in there.

Q. Have you examined them to see if they have the appearance of being watertight? A. Yes.

Q. They are? A. That is what they were put in to be. I have not looked at them now. Even

if they are there, I have not gone there to make such an investigation. 4213

Q. You are not prepared to say whether the "White City" has bulkheads? A. She has three of them, if I remember right. I do not say that, but I think she has. I have only been in the boat once for the last two years.

Q. You are not positive? A. Not positive.

Q. Is it your recollection these bulkheads she has are supposed to be watertight? A. That is what they were put in there for, because the man who owned the boat asked me that some time ago.

Q. Your testimony is if they are in there they are supposed to be watertight? A. Supposed to be watertight. 4214

Q. Is there any sheathing on the "Cherady"? A. No, there is none on her now either.

Q. Mr. Witness, if you had a boat about 57 feet long and 18 feet beam and 5 feet depth, registered measurements, how many people would you say she could safely carry? A. Is that over all length, or water line measurement?

Q. These are the measurements as the Government gives them. A. During the summer on the river, as the boats carry them, about up to 70 people. 4215

Q. Now, would you be surprised if I told you that that boat has been licensed in the Hudson River to carry 160 people? A. That can be if it is a boat like that. That is why I asked you if it was over all length or water line length. That depends on the shape of the boat. I know a boat may be 57 feet on the water line and 70 feet over all. If the boat goes down the water line increases from 17 to 19 in about 6 inches

4216 more draft, and it probably would increase the water line considerably too.

Q. Suppose I told you that the over all measurement of that vessel was 62 feet? A. That is true. That particular boat I guess I cut off, that is the one I cut the end off.

The Court: What did he say?

Mr. Englar: He says that measurement is true, because he cut the end off that particular boat.

4217 Q. I am not talking of a particular boat, but I am asking you about a boat of the measurements I gave you before, and I am asking you to assume that 56 feet is her water line measurement, and her measurement over all is 62 feet. I ask if that difference of about 5½ feet would add very much to her passenger-carrying capacity. A. Yes, if the boat increases in length and beam as she goes up, that would increase stability and carrying capacity at the same time as she is being loaded down.

Q. When I gave you a length of 56.6 you said she might carry 70 people. How many would 4218 you say she could carry if her length over all was 62 feet? A. If you figure the carrying capacity by space as it is figured on the Hudson for summer, that is not figured on capacity, that is figured on seating space on deck; the safe carrying capacity and seating capacity—I would like to have you explain this clearly to me and not mislead me. I would like to make a statement to which I can back myself up to.

Q. You are not able to make an answer to my question? A. I make an answer, as many people

as have room to sit on the deck, you can put on the boat, and it is safe to carry them for seating capacity. 4219

Q. Your point is, everybody must have a seat? A. That is about what is referred to, and the rest of the space, so many square feet to a person, that is the way we figure. It depends on the shape and size of the boat, but roughly on a safe margin we figure we can carry on a boat like that 70 people and not have them crowded and have them safe.

Q. How many square feet are you estimating every person has to have to be safe? A. About 2 square feet. 4220

Q. I will ask you about another boat. I will give you these dimensions, 51 feet long by 17.8 beam, 5.2 depth, and I will ask you how many men you think could be safely carried on that boat—if you will wait a moment I will give you the over all length. Those are the registered measurements. Over all is 62 feet. A. 62 by what?

Q. 62 by 17.8 by 5.2. A. A boat like that should carry 50 people.

Q. Would you be surprised if I told you the Local Inspectors had licensed that boat to carry 90 people? A. That might be. I have got the Local Inspectors to do that for me. I carried 160 on the "Domino," which was only 57 by 16, and got away with it. 4221

Q. What trade did you carry them in? A. To the battleships, packed them on like sardines.

Q. You carried you say 160? A. That is what I had tickets for, 160 on the same boat.

Q. And the Inspectors passed her with that? A. Nobody stopped me.

Q. Did they give you one of these metal pen-

4222 nants? A. No. We were there, they came down, the Inspector was on the float, we stood there and put the people on, and out you go, that is all the inspection I went through.

Q. What was the name of that boat again? A. The "Domino."

Q. Does everybody get a seat on the railroad ferryboats—City ferryboats? A. That I don't know.

Q. The testimony shows here the police boat "Gypsy" had sheathing only 6 inches above her water line. You do not think that is enough? A.
4223 It is not enough to be safe, but if the police cares to have that as a safe margin, that is their own hard luck.

Q. This boat you speak of as the "Domino," I have here the register issued by the Bureau of Navigation, which gives her tonnage as 14 gross, 11 net, and gives her registered measurements as 42 feet long, 14.8 wide and 4.10 depth——A. That is the water line.

Q. No, it is even 4 feet. A. That is figured from underneath the deck to on top of the keel.

Q. What was her length over all? A. She was then about 65.

4224 Q. 65 feet over all and only 42 feet on the water line? A. Yes.

Q. Where is she now? A. She is, I think, in Newark.

Q. Has she been rebuilt at all? A. Yes, I done a lot of rebuilding; I rebuilt that a couple of times.

Q. I cannot understand how you could have a boat 20 feet longer on deck than she was on the water line and still not have bigger tonnage. A. That is something you simply don't understand.

That is a trade of its own to understand. That is not your trade. 4225

Q. You understand it all right, do you? A. Yes, sir.

Q. This boat of yours, the "Domino," is given here as having a net registered tonnage of about 11. A. Yes.

Q. Exactly 11? A. Yes, sir.

Q. And the registered tonnage of the "Linseed King" was just about 11? A. Yes, sir. Do you know what that means?

Q. Yes, I think I do, but what I would like you to do would be to explain to me how you could have a boat so much larger than the "Linseed King" and not have any more registered tonnage. A. Because that is all the available space that is there to measure in the boat. 4226

Q. At any rate, she had a net registered tonnage of about 11 tons, and you carried 160 people on her out to the battleships? A. Yes.

Q. You ran her yourself? A. I operated the boat myself.

Q. Did you consider that you were taking a great chance? A. I did, and I hollered like the deuce about it, but they pushed them on and shoved me off, and I had my lines off, and I was out in the river, and I quit the job for that reason. 4227

Q. Was that your boat? A. My property at that time—the Northern Contracting Company, in whose name she was registered, but the boat is my boat; it was my boat—not it is. I sold it since.

Q. I understand your testimony on direct to be that in order to carry 87 people a boat ought to be 80 feet long? A. Not ought to be. If the

4228 boat was 80 feet by 12 feet, or the boat was 60 by 18 or 20 feet, that would be a safe margin.

Q. What you said on direct was that to carry that many people you ought to have a boat 80 by 20? A. I say it ought to be a boat about 80 feet, 80 by 20, if you want to have good safety, in a boat 80 by 20, or I will say 60 by 20, or if you have a boat 80 by 14, there are quite a few old yachts like that—if you have a boat 60 or 64 by 20, it would give the same capacity approximately as 14 by 80 would.

Q. Then you did not intend to say you would
4229 have to have a boat 80 by 20 to carry this many people? A. Not necessarily.

Q. I understand if you had 80 by 14, or 60 by 20, you would be satisfied? A. That would be a safe margin.

Q. And anything less than that you would not consider safe? A. Not for the purpose it is intended to use during the winter. During the summer about 70 per cent. of that would be plenty enough.

Q. When you distinguish between winter and summer, you are talking about ice? A. Ice and rough weather. In summer if you get a little
4230 storm it don't amount to much. During the winter the weather is rougher, and especially ice, when you have to combat with ice.

Q. What you mean is these dimensions you spoke of would be necessary if you were going to run the boat when there was ice or when there was stormy weather? A. Yes, sir.

Q. That is what it comes down to? A. That is just what it comes about out.

Q. I wish you would take a sheet of paper and draw a diagram showing what the metacenter of

a boat is. A. I won't do that now. I will bring 4231
my papers and figures, and if the Court wants me, I will show you how to do it. I will bring you set figures. I figure my own way, and I guarantee those figures.

Q. You cannot give a formula of how you do it? A. No, I won't; that is my business.

Q. You say your best definition of metacenter is it is nothing but the center of weight? A. No, that is not what I tried to tell you. Metacenter is where the weight is located in the boat.

(Witness excused.)

Recess till 2 P. M. 4232

Met pursuant to adjournment at 2 P. M.; present as before.

Mr. Englar: I just want to read into the record the registered measurements of four boats they have read about this morning. Launch "Charabi", official number 110,861; gross tonnage, 14, net tonnage 10, registered dimensions length 62.9 feet, breadth, 13.5 feet, depth, 4.8 feet.

"Doris", official number, 209,869, gross 4233
tonnage 28, net tonnage 14, registered dimensions length 56.6 feet, breadth 18 feet, depth 5 feet.

Launch "Vigil", official number 161,816, gross tonnage 12, net tonnage 11, registered dimensions length 44 feet, breadth 13.3 feet, depth 4.2 feet.

Launch "White City", official number 210,072, gross tonnage 29, net tonnage 24, registered dimensions length 56.5 feet, breadth 17.6 feet, depth 5.2 feet.

HELEN ROBERTS, called as a witness on behalf
4234 of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Jayne:

Q. Mrs. Roberts, you are a widow? A. Yes, sir.

Q. What was your husband's name? A. Alfred.

Q. Where did he work in his lifetime before his death? A. With Spencer Kellogg & Sons.

Q. How long had he been working there? A. Eight months.

Q. When did you last see him? A. On Decem-
4235 ber 20th.

Q. What time? A. At five o'clock.

Q. What was he doing? A. Going to work.

Q. He was going to work? A. Yes, sir.

Q. Had he worked there steadily during those eight months? A. Yes, sir.

Q. Did you ever see him again? A. No, sir.

Q. Was his body ever found? A. No, sir.

Q. Did you make inquiry at the Morgue and other places of information, and go to seek, to find his body? A. Yes, sir.

Q. And you never found it? A. No, sir.

4236 Q. Are these the letters of administration that were issued to you? A. Yes, sir.

Mr. Jayne: I ask that they be marked for identification.

(The same were marked Claimants' Exhibit NN for Identification of this date.)

The Court: Is it necessary to offer the letters of administration?

Mr. Jayne: This testimony is only of-

fered for the purpose of establishing the number of people on the boat, in that we have a certain number of bodies that were found, and a certain number of survivors, and there are certain people who were missing. I am offering this only to show in addition to the bodies found and the survivors found, that these people who were missing were in all probability on this boat, that is, they worked there, they went to work that morning and never came back, and no body has been found. I am not offering this as proof of claims, because they are filed before the Commissioner. But I reserve the right later to a jury trial, after it goes before the Commissioner. I am not trying to bring my clients into admiralty, only as to the number of people on the boat. 4237 4238

The Court: All right, with that understanding.

SADI VAROUXAKI, called as a witness on behalf of the claimants, being duly sworn, testified as follows: 4239

Direct examination by Mr. Jayne:

Q. Mrs. Varouxaki, what was your husband's name? A. Fred Manuel Varouxaki, but he worked under the name of Mike Verakas.

Q. How long had he worked for Spencer Kellogg & Sons? A. He worked for them since 1923. Part of the time they laid off the hands and he did not work.

4240 Q. Just before this accident happened had he been working there? A. From November 25, yes, November 25.

Q. Until the time of this accident? A. Until the time of this accident.

Q. When did you last see him? A. He left that morning at 6 o'clock, each morning he left at that time.

Q. Did he leave as usual in his working clothes to go to work? A. Yes, sir, in his working clothes. I fixed up his lunch and everything to go to work.

Q. Do you know what his number was at the plant? A. 5,132.

4241 Q. Did you get a check for a week's pay after he had quit work? A. Yes, they sent me two checks, one for a week's pay——

Q. All right; that is all.

Mr. Englar: Let her finish, as long as she has started.

Q. Did you ever see him after that time? A. No.

Q. Did you ever see his body? A. No.

Q. Was his body ever found, to your knowledge? A. No.

4242 Q. Did you inquire of the authorities? A. Yes, I always went to the Morgue.

Q. It was never found? A. No.

Q. Are these his letters of administration? A. Yes.

Mr. Jayne: I offer these for identification.

The Court: Inasmuch as the testimony is limited to the probability of the number of persons having been aboard this craft at

the time she went down, I do not see the materiality of offering in evidence the letters of administration. 4243

Mr. Jayne: That is why I am only asking to have them marked for identification. Mr. Axtell says that he desires to have them in.

Mr. Axtell: We are going to offer certain letters today or tomorrow of others whose widows are here, but the husbands have not been found, and perhaps the Court will take the letters of administration as presumptive evidence of their death, because when you go to get letters of administration you have to file certificates where the person was last heard of, and so forth, for the authorities require certain proof before the letters are issued, and we hope the Court might well take judicial notice of that. 4244

The Court: Very well.

(The same were marked Claimants' Exhibit OO for Identification of this date.)

Mr. Englar: No cross examination. 4245

(Witness excused.)

GARLAND MCEACHIN, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Jayne:

Q. How do you pronounce your name, McCann? A. McKeon.

4246 Q. You had a brother? A. I did.

Q. What was his name? A. His name was Henry.

Q. How old was he? A. He was about 28 years old.

Q. Had he been working for Spencer Kellogg? A. He had.

Q. How long? A. About a month, over a month, say nearly two months.

Q. Did he live in the house with you? A. He did.

Q. Did you see him leave for work that morning? A. I did.

4247 Q. He left as usual, at the usual time, dressed in his working clothes? A. He did.

Q. Did he ever come back? A. Not yet.

Q. Was his body ever found? A. It was never recovered.

Q. Did he leave a widow? A. He did.

Q. Nora? A. That is right.

Q. Where is she now? A. She is in North Carolina.

Q. Did the family seek to find the body? A. I did myself.

Q. Did you go to the Morgue? A. Several

4248 times.

Q. And made inquiry of the authorities? A. Yes, sir.

Q. Was it ever found? A. Never found.

Q. These are the letters of administration that were issued? A. Yes, sir.

Mr. Jayne: I ask that they be marked for identification.

(The same were marked Claimants' Exhibit PP for Identification of this date.)

Q. Do you know what his badge number was? 4249
A. 3,142, I think it was.

Q. Do you know whether his widow or anybody received any pay checks after he was drowned? A. There was two; she received two.

Mr. Jayne: All right.

Mr. Englar: No cross examination.

(Witness excused.)

AMIE SIMS, called as a witness on behalf of the claimants, being duly sworn, testified as fol- 4250
lows:

Direct examination by Mr. Jayne:

Q. Do you know that your son had a badge number working for Spencer Kellogg? A. No, not as I know of.

Q. You do not know the number? A. No.

Q. What was his name? A. George Sims.

Q. He had been working for this company? A. No, that was his first morning.

Q. How do you know he was going there? A. Well, because he went over there on Saturday 4251
and signed, and then he went back on Sunday, and went across on Sunday, and they told him to be there at 6 o'clock Monday morning, and I woke him up to go to work and he said——

Q. And that is where he was going? A. That is where he was going.

Q. Did you ever see him alive again? A. No, I never did.

Q. Did you find his body? A. I found his body.

4252 Q. He was married? A. Yes.

Q. His wife's name was Genevieve? A. Genevieve Sims.

Q. And letters of administration were issued to her? A. Yes.

Mr. Jayne: That is all.

Cross examination by Mr. Englar:

Q. Where was his body found? A. In the Bellevue Morgue.

Q. On what date, the day of the accident? A.
4253 Tuesday, about 11 o'clock.

Q. The day after the accident? A. The day after the accident.

Mr. Englar: That is all.

Mr. Jayne: All right; that is all. Thank you very much.

(Witness excused.)

PETER SULLIVAN, called as a witness on behalf of the claimants, being duly sworn, testified as
4254 follows:

Direct examination by Mr. Axtell:

Q. Mr. Sullivan, you are employed where? A. Spencer Kellogg & Sons.

Q. What was your occupation there? A. Chauffeur.

Q. How long have you been a chauffeur? A. Two years.

Q. What? A. Two years.

Q. Have you ever been a seaman? A. No, sir. 4255

Q. Have you ever owned a boat, I mean a motorboat? A. I have been on them more or less, yes.

Q. Did you ever own one, I said? A. No, sir.

Q. Did you ever operate the "Linseed King"? A. What?

Q. Did you ever operate the "Linseed King," yes or no? A. Yes, I did.

Q. Did anybody give you instructions about it before you run her? A. Yes.

Q. Who? A. Captain Rohweder.

Q. Captain Rohweder. Who instructed Captain Rohweder to instruct you, if you know? 4256

Mr. Englar: Just a moment. I submit the witness probably does not know.

Mr. Axtell: Oh, do not suggest that; I had lunch with this witness.

The Court: Was he present when Captain Rohweder received instructions from anybody?

Q. Were you present at the time that Captain Rohweder was told to show you about the boat? A. Yes, I was there. 4257

Q. Who told him? A. Mr. Balz told him.

Q. And when did you operate the "Linseed King"? A. About a week before the accident.

Q. About a week before. Did you ever run a motorboat before that? A. Yes, I run that same boat about two weeks before, when I was breaking in with Captain Rohweder.

Q. You had run her about two weeks before that? A. Yes.

Q. And how much instruction did you get in

4258 the running of this boat? A. Well, I got full instructions.

Q. Tell us what they were. A. Well, they showed me how the boat steered, how to dock the boat, how to start her out, and so forth.

Q. How many times did he take you across the river and back, showing you that? A. Oh, I would say,—I could not say how many times.

Q. A couple of times? A. No, I was over quite a few times.

Q. More than that? A. Yes.

Q. Then you ran her yourself for a day or
4259 two? A. I ran her for two days when Mr. Rohweder was sick.

Q. Did you run her nights any? A. No.

Q. Did Mr. Balz give you instructions when you were to run the boat, or how, or did Mr. Rohweder tell you? A. Mr. Rohweder gave me instructions how to run the boat.

Q. What conversation did you have with Mr. Balz about running a boat at that time, do you remember? A. I did not have any that I know of.

Q. You did not have any? A. No.

Q. Did he tell you how many life preservers
4260 you had on the boat? A. Well, I knew, because me and Captain Rohweder counted them.

Q. How many were there? A. 83.

Q. This is a picture of some of those life preservers, is it not, Exhibit LL, that is a picture of them? A. Yes, sir.

Q. Some of them look pretty black, dark? Were they old? A. No, they were in good condition.

Q. Did you test them? A. Well, we had them opened and looked them over and everything.

Q. Just that day did you? A. No, that was 4261
two weeks before the accident.

Q. Why did you open them up? A. Well, we just looked them over for curiosity, that is all.

Q. They looked pretty dirty, did they not? A. They were in pretty good condition.

Q. Did you throw son. of them over the side to see if they would float? A. We did not test them as far as that.

Q. You looked them over? A. Yes.

Q. You wanted to find out if they were any good? A. Of course, we had to pile them up.

Q. Did you look everything else over in the 4262
boat like that? A. Yes, surely.

Q. This boat had been submerged? A. She was as far as the water line.

Q. She was full of water? A. No, she was not.

Q. Were not you rather nervous about that boat? A. I wasn't nervous, no.

Q. Was not that why you were looking over these life preservers? A. No, sir.

Q. Why were you looking them over? A. Because there was about 30 piled in the back of the boat.

Q. And was the top full of them? A. Yes, the 4263
top was full.

Q. Did you know that top would hold 86 life preservers like that? A. Well, I could not say; I should judge there was about 50 or 60 up on top.

Q. And how many did you say in the back a few moments ago? A. About 30.

Q. Of this type? A. That type.

Q. Just like this? A. Yes.

4264 Mr. Axtell: I will ask that one of these be marked for identification. I will indicate what it is. It is one adult's Atlantic-Pacific Manufacturing Corporation, 124 Atlantic Avenue, Brooklyn.

(The same was marked Claimants' Exhibit RR for Identification of this date.)

Q. Of course you do not know what company they were made by, there were not any letters on them? The letters were all worn off? A. There were letters on them, naming them life pre-
4265 servers.

Q. Did you see any water in that boat? A. Not anything to be of any danger.

Q. You did see water in the boat, didn't you? A. Well, there was some water which would come from the pump of the engine drips, that is all.

Q. You do not know where it came from, do you? A. I could see it dripping from the pump of the engine.

Q. You had this boat pumped out every night, did you not? A. At the time I was on her the boat was pretty dry.

4266 Q. Didn't you pump her out every night? A. I pumped her out, what was there, a little bit; there was not much there.

Q. Did not Mr. Balz tell you to pump her out every night dry? A. I was given instructions if there was water in her to pump it out.

Q. At the time Mr. Balz gave you those instructions did he tell you when you should run the boat and when you shouldn't? Did he say anything about that? A. No, he didn't say, but I heard——

Q. He didn't say anything, that is it. You received no instructions at the time you took the boat over as to whether she was to run one time or another; you were just to run the boat, is that right? A. We had a regular schedule. 4267

Q. There was a certain hour that you were supposed to be there? A. I run the second trip; I do not just remember what time it was.

Q. Who made the first trip? A. The night captain.

Q. The night captain? A. Yes.

Q. That is, he was on duty all night? A. All night.

Q. And he had other duties, I suppose, in the place, besides running the boat? A. Yes, sir. 4268

Q. And he would lay her up at night about 11 o'clock, and then take her out at 6 o'clock in the morning? A. Yes, sir.

Q. And it was the practice to pump this boat just as soon as she got into the dock and laid up? A. It was only the practice to pump her if there was water in her.

Q. Have not you seen that boat pumped between trips too? A. No, sir.

Q. Wasn't there a hose connection going into the pump from the engine so that the pump would work? A. There was a connection that would pump water into the engine to cool the engine. 4269

Q. How did you pump it up? A. Through the bilge pumps.

Q. How was the bilge pump connected to the engine? A. There was a cock on the end of it.

Q. And then there was a pipe that came down into the bilge? A. Yes.

Q. And you had a switch so that you could reverse the process and start pumping the water

4270 out of it; did not you do that every trip? A. If there was water in it you could.

Q. You had a galvanized pan under the flywheel, did you not? A. There was a copper pan.

Q. How far was it from the base of the flywheel to the bottom of the boat? A. Well, I should judge, the way I looked at it, I would judge about 3 or 4 inches.

Q. And the water was up above that distance in the bottom, wasn't it? A. The water was always below that.

Q. How high was the pan? How deep was the
4271 pan from the bottom to the top? A. You mean from the bottom of the flywheel to the bottom of the pan, there was four inches clearance.

Q. That is between the bottom of the flywheel and the pan, how far was the pan from the floor of the boat, right on it? A. Well, I should say——

Q. Rather, what I mean to say was, the keel, that big piece that runs fore and aft. A. I could not tell you; I never was under it.

Q. How deep was the pan itself? A. The pan itself?

Q. Yes. A. From the floor?

4272 Q. No, from the top of the pan to the bottom of the pan. A. I would say about 8 inches.

Q. Have not you seen the time when the water would come up pretty close to the top of that pan? A. No, sir, not while I was on the boat.

Q. Have you seen it at other times when you weren't on the boat? A. No, sir.

Q. Do you know anything about this siphon that was running on the dock there? A. No, sir.

Q. Did you know there was a steam siphon on the dock? A. There might have been one.

Q. Did not you see it working to pump the boat out? A. I seen one laying on the dock, but I never seen it on the boat. 4273

Q. Wasn't there a connection with the steam line to the boiler line? A. It was connected to the steam line, but not to the boat.

Q. And it had a hose that led to the boat? A. I tell you, I never seen the siphon in the boat.

Q. You saw the hose? A. I seen the siphon laying on the dock; what they were using it for, I do not know.

Q. It was located on the dock at the point where the boat came in? A. It was located there, yes. 4274

Q. Did you ever see it used for anything else? A. Well, I never seen it used.

Q. You do not know what it was there for unless to pump the boat, do you? A. I seen it there.

Q. You know very well it was used to pump the boat? A. No, I do not know what it was for.

Q. You never thought about that, never had an opinion about that? A. No, sir. I knew there was a siphon there, but I did not know what they used it for, because there was no cause to use it in the boat. 4275

Q. How many people did you carry on the boat when you ran her? A. The most we ever carried was 40, 45 people.

Q. How many of them were standing up? A. There was 18 on each side who would be seated, so there must be about 14 standing.

Q. About 14 standing? A. Not 14, there must have been I judge about 40 or 45 people on the boat; 36 sitting down——

4276 Q. Are you trying to keep within the limits of 40 or 45, or are you trying to tell us how many people there were in the boat?

Mr. Englar: I object to that.

The Court: Sustained. The witness was called by you, and I presume he is getting as close to the truth as most witnesses.

Mr. Axtell: All right.

Q. That is 12, or as many as you did have standing; were they usually up forward or in
4277 back? A. They generally was standing aft.

Q. You told them to stand aft? A. Yes, sir, I did.

Q. Tell the Court why you told them to stand aft. A. To balance the boat nicely.

Q. If you had your seats full—first, how many did you say on the seats, 36? A. 36 on the seats.

Q. 18 on a side; and you had 12 men standing up forward; what would it do to the boat? A. Well, she would carry all right, but——

Q. She would be down by the head, wouldn't she, or she would be a little down by the head?
4278 A. No, not exactly. I was always told if I had anyone standing it would be best to carry them aft.

Q. Who told you that? A. Capt. Rohweder.

Q. Did he explain to you why? A. Yes, sir.

Q. Why did he say? A. He said, "Your boat will carry better."

Q. Did you yourself notice anything about that, how she would carry with them forward or aft? A. No, I couldn't notice.

Q. You didn't notice much? A. No.

Q. Did not you notice if you had them up forward it would put her down, or did you never have them forward? A. There would be some forward, but it wouldn't make much difference. 4279

Q. You kept them back when you were running the boat? A. As much as I could, yes.

Q. You were not told not to run the boat in the ice, were you? A. No, I was not told at that time.

Mr. Axtell: That is all.

By Mr. Jayne: 4280

Q. You never had any standing in the front, so you do not know how she steered when people were standing in the front? A. I never had a crowd standing in front.

Q. Did they tell you anything about steering better if they were in the rear? A. No.

Q. Did you find that out for yourself? A. I found it was better to run the boat with the men in the aft.

Q. For what reason? A. The boat would carry better, she would ride better in the water.

Q. Steer better? A. Steer better and propel better. 4281

Q. You mean by riding better, if you had them in the stern the propeller would be under water, and if you had them in the bow the propeller would be further out? A. The propeller would stay under water at all times, whether the men were in the bow or the stern.

Q. Naturally, if they were in the bow, she would be down by the bow? A. If you loaded a

4282 lot of men in the front of her, of course it would have to go down in the bow.

Q. These life preservers that you counted, how many did you count in the roof? A. I could not tell you just exactly.

Q. You told me exactly how many you counted. A. I told you that I counted 86. We counted 86, me and Mr. Rohweder counted 86 life preservers.

Q. All right. How many did you count under the roof? A. There was 56.

Q. 56 under the roof? A. Yes, sir, approximately.

Q. How many on the seats? A. 30 in the rear.

4283 Q. Other people have testified that there were 13 on each seat. You might be mistaken, that there were more than 13, or do you think that was right? A. At that time they counted them that way, but I know two weeks before the accident that is the way we counted them.

Q. How were those life preservers, were they folded once like those over there are? (Indicating.) A. Just the way they are.

Q. Just one fold? A. Yes, sir.

Q. And how many thicknesses was under the roof? Was there one separate space for each

4284 one, or were the life preservers doubled in each space? A. No, there was one place, one in each space, right under the whole roof.

Q. The entire roof was filled with life preservers that way? A. Yes, sir.

Q. No open space? A. No open space. There was little strips holding them up, which could be pulled down very easily and get the life preservers.

Mr. Jayne: That is all.

Cross examination by Mr. Englar: 4285

Q. You never made the first trip in the morning, did you? A. No, sir.

Q. Did you ever have any trouble keeping this boat clear of water? A. No, sir, I never had any trouble.

Q. At any time while you had anything to do with her, did you see a steam siphon used to pump her out? A. No, sir.

Q. This steam siphon that you said you saw on the dock, was that there all the time, or was it just on one occasion? A. Just on one occasion I seen it lying on the dock. 4286

Q. Was that siphon a regular equipment on the dock? A. Yes, sir.

Q. Was it there all the time, that is what I mean? How long did you see it on the dock there? A. Well, I could not say that because I only seen it those two days when I was down on the boat.

Q. You only saw it on two days? A. Yes, sir.

Q. You do not know whether it was there the rest of the time or not? A. No, sir.

Q. You said the night captain ran the boat on the first trip in the morning; who was that? A. That was Lang. 4287

Q. During the period that you were connected with the boat did you ever hear of a man named Dressler running it? A. Yes, sir.

Q. Did he run it while you were connected with it? A. He was running the boat, I remember, as a relief captain, before I ever went on it.

Q. I mean while you were connected with it, did you ever know of his running a trip while you were running it? A. No, sir.

4288 Q. During the two days I believe you said Capt. Rohweder was sick you ran the boat, is that right? A. Yes, sir.

Q. Did you know of this man Dressler running the boat at any time during those two days? A. No, sir, I did not.

Q. Did you ever actually see him run the boat? A. I have seen him run the boat, yes, sir.

Q. Do you remember when? A. No, sir; I could not give you a definite date.

Q. It was a considerable time before this accident? A. Yes, it was.

Q. There was another man Klahre; do you
4289 know him? A. Yes, I knew him when I first come to work there.

Q. When was that you first came to work there? A. Two years ago, about two years ago.

Q. Did you ever see Klahre run the boat during the year prior to this accident? A. No, sir, I never seen him.

Q. You never knew of him to run the boat during that year? A. No, sir.

Q. Did you know whether it was the practice of the company to run this boat all winter, or whether they laid her up? A. No, I have heard
4290 through the plant, there was a report that the boat was taken out of the water as soon as the ice appeared.

Q. Have you heard that since the accident or before the accident? A. Oh, I heard that before.

Q. Had you been there during the previous winter? A. Yes, sir.

Q. Do you know whether the boat was run during the winter or not? A. No, it was not, no.

Q. It was not? A. No, sir.

Mr. Englar: That is all.

Re-direct examination by Mr. Axtell: 4291

Q. Do you know when the winter begins? A. When the winter begins?

Q. Yes. A. I should judge about December the winter begins.

Q. Then Mr. Stover is mistaken in saying the boat was run up to January 5, 1925? A. Well, that is——

Q. He is mistaken, is that it? A. What?

Q. He is mistaken? A. I cannot say that.

Q. He testified under oath here that she was run until January 5, 1925. Do you say he is wrong? A. No, I cannot say that. 4292

Q. It was no part of your duties to run the boat at that time? A. No, I didn't have nothing to do with it.

Q. You know ice when you see it in the Hudson River? A. Yes, surely.

Q. You have seen that boat running when there was ice in the Hudson River, haven't you? A. No, I have not.

Q. Oh, you haven't? A. No, sir.

Q. Now, if you were running this boat, you were supposed to run her on the very first shift, and get men over here on this side to go over there, and a seed ship was in to unload—— 4293

Mr. Englar: Just a moment. I object——

Q. Are you listening to my question or listening to him? A. I did not get the first part of it, Mr. Axtell.

Q. I will state it over again. If you were running that boat and you knew that a seed ship was in and longshoremen expected on the pier at

4294 95th Street, and you received no orders not to run the boat, would you go to meet the people to unload the seed ship?

Mr. Englar: Your Honor, it appears that this witness never ran the boat on the first trip in the morning, he only ran it on subsequent trips, so the question my friend is putting to him never came up in his experience.

The Court: Sustained.

Q. You would never stop running the boat un-
4295 less you were told?

Mr. Englar: Objected to.

The Court: Sustained. I cannot see why you should cross examine your own witness.

Mr. Axtell: He is in their employ.

The Court: That goes to his credibility.

Mr. Axtell: That is all.

(Witness excused.)

WILLIAM N. NOBLE, called as a witness on be-
4296 half of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. Captain Noble, what is your job now? A. Well, I am a master and pilot.

Q. Where are you working now? A. I am not working just now.

Q. I see. You are in business for yourself, something like that? A. Well——

Q. Retired? A. No, I am just off for the time being; no work. 4297

Q. Were you on the tug "Hercules" of the Cornell Steamboat Company in January, 1926? A. January?

Q. December, 1926, I meant to say. A. Yes, sir.

Q. Do you remember the day of this accident to the "Linseed King", December 20th? A. Yes, sir.

Q. Can you turn to your log and tell us where your boat was at that time, or have you an independent recollection of it? A. No, I have only what the log tells me. 4298

Q. You looked at the log today, did you not? A. Yes, sir.

Q. Where was your boat on that day? A. At 54th Street.

Q. That is the Cornell Company's pier? A. Yes, sir.

Q. At what time did you leave there? A. 9:30.

Q. Where did you go? A. To Edgewater.

Q. What time did you get to Edgewater? A. 9:50.

Q. That is twenty minutes, isn't it? A. Yes, sir. 4299

Q. What did you do there? A. Coaled the boat up.

Q. Coaled? A. Yes, sir.

Q. Was that at Burns Coal Company's dock just above the Spencer Kellogg Company? A. The Edgewater Coal dock.

Q. How long did you stay there coaling? How long did it take you to coal? A. 40 or 50 minutes, probably.

Q. Then where did you go? A. Back to 53rd Street.

4300 Q. What time did you get back there? Have you a note in your log? A. 11:05.

Q. Then where did you go? A. To 78th Street.

Q. Is that the North River or East River? A. North River.

Q. On the New York side? A. Took in water there.

Q. Then what did you do? A. We ran from there to Newburg.

Q. What time did you get to Newburg? A. 6 P. M.

Q. The same day? A. Yes, sir.

4301 Q. How many miles is it to Newburg? A. 60.

Q. Will you tell the Court what you recall of the condition of the Hudson River as to ice on that day, the 20th of December? A. The ice was quite bad.

Q. Where did you observe ice in the river? A. Well, ice at Edgewater, and some ice all the way up from there. We struck some solid ice from Hastings up; we had to break through.

Q. Did you have a tow? A. No, running light.

Q. What were you going up there for? To bring another boat down, or something? A. To bring a tow down.

4302 Q. How thick was the ice, do you recall? A. To the best of my remembrance, it was 4 to 6 inches thick.

Q. Was that hard ice or soft ice? A. Hard ice.

Q. How far down the river did you see ice? A. I have not any remembrance of seeing any until I got well up towards Edgewater.

Q. That is about 95th Street? A. Yes.

Q. Did you hear about this accident that day? A. Yes, sir.

Q. What time did you hear about that? A.

As soon as I got to Edgewater; before I got to Edgewater, really. 4303

Q. Was there ice in the river then? A. Yes, sir.

Mr. Axtell: That is all. Your witness.

Cross examination by Mr. Englar:

Q. Where was it that you said you saw ice 4 to 6 inches thick, and hard ice? You said you saw some ice that was 4 to 6 inches thick and hard. Where was that, captain? A. Well, in all the river, from the lower end at Edgewater, from there up around Hastings it was broken, 4304 more or less, but there was large fields of it.

Q. Where? A. There was a large field at Edgewater.

Q. And from there on up? A. From there up above Edgewater.

Q. You do not remember any ice below there? A. No, I do not recall any.

Q. Just when did you leave to start on your trip to Newburg? A. I will have to consult the log. (Witness consults book.) 12:10.

Q. It took about six hours to get to Newburg? A. Yes, sir.

Q. That is pretty good time, isn't it, captain, 4305 for your tug to make that run? A. Not extra.

Q. Well, you would not call it a slow trip, would you? A. Not extra slow, no.

Q. Just about a normal trip, is not that right? A. She would beat that quite a little without any ice.

Q. How much do you think you could beat it without any ice? A. An hour; an hour and a half.

4306 Q. Have you got any entry about ice in your logbook, captain? A. I see one.

Q. May I see it? A. Yes, sir. You had better let me read it to you. I doubt if you can read it.

Q. Let me have it. A. From Hastings up, ice from Hastings up. That meant solid ice.

Q. The only entry you have about ice is from Hastings up? A. Yes.

Q. On that day? A. That is where we had to break it.

Q. The ice below Hastings really did not affect your navigation? A. We would run around the big fields, or slow up and go through them.

4307

Mr. Englar: That is all.

Re-direct examination by Mr. Axtell:

Q. That is a steamboat of yours? A. Towboat.

Q. Steel hull? A. No, wooden hull.

Q. Has she got any sheathing? A. Yes, sir.

Q. Is it for ice protection? A. Sheathed especially for ice, yes, sir.

Q. Do you know whether this thin floating ice will cut wood in boats if they are not protected? A. The thinner the ice, the more it cuts.

4308 Q. I will ask you to look at the photograph. Will you let us have the one you put in evidence, the one showing the gash in the side of the boat? I ask you to look at these three pictures, Petitioner's Exhibits 3 and 2, and this one, MM. How long have you been sailing around the harbor in ice in the winter time? A. 30 years or more.

Q. How old are you, captain? A. 61.

Q. From your knowledge of ice and boats, could you state with reasonable certainty, assum-

ing that this boat of which you see a picture was in the ice in New York Harbor on the 20th of December, running between 95th Street pier, New York, and Edgewater, New Jersey, can you state with reasonable certainty if she was loaded heavily whether those cuts in the starboard bow were made by ice in navigation? A. I do not believe I know just what—— 4309

The Court: What you mean, is that it?

The Witness: Yes, sir.

Q. In your opinion can you state whether or not ice might have been accountable as the cause of producing those cuts? A. That is what it looks like. 4310

Q. It looks like it? A. Yes.

Q. You have seen many other pieces of wood in boats cut by ice, have you? A. Yes, sir.

Mr. Axtell: That is all.

Re-cross examination by Mr. Englar:

Q. Captain, suppose you found that that cut on the starboard bow there was not parallel to the boat's water line, would that change your opinion any? 4311

Mr. Axtell: I object unless he puts into his question that she was excessively and very heavily loaded, her bow down to 12-inch freeboard, and with 8 inches on either side.

Mr. Englar: It does not make the slightest difference where the water line was. I am asking him to assume that that cut was not parallel to it.

4312 Q. If you found that cut was not parallel to the water line, but was at an angle of about 15 degrees to the water line, would that change your opinion as to whether the vessel had gotten that cut by navigating through ice?

Mr. Axtell: And I ask you to take into consideration, I will object to the question unless he also assumes that the boat was full of men standing on the floor, she had a depth of 4 feet, and that the boat was rolling and did roll when she struck.

4313 Mr. Englar: You can put any other hypothesis you want, but that is my question as I put it to the captain.

The Court: I think the question is all right. The witness is here on cross examination. You are not interrogating him about anything new or making him your own witness?

Mr. Englar: No, sir.

The Court: The question is all right.

Mr. Jayne: I want to register an objection on the ground that it is incompetent because the hypothesis is not adequate to prove anything.

4314 The Court: All right, overruled. Let us proceed.

(The last question was repeated by the stenographer.)

By the Court:

Q. Can you answer that question? A. If I knew just what they want. I will answer it this way: that I have seen cuts on the bow of boats that were not at the water line, that would be

higher up the stem of the boat than they were 4315
at the side. As the water fills up, the faster the boat is going through the water, the higher it is around the center of the bow.

Q. Suppose you found that there was no corresponding mark on the other side of the boat, would that affect your opinion as to whether that cut was made by running through new ice? A. It was possible for that boat to skim along one side of a field of ice, and not touch the other side.

Q. Would you say that was likely? A. It is possible, with ice as heavy as it was that day.

Q. You think that heavy ice would be likely to make that sort of a cut? A. If she dragged 4316
along it, yes.

Q. You are assuming she would have to drag one side of the boat along the ice, and the other side not touching the ice? A. To cut one side only, yes, that would have to be, that could be that way.

Q. Is it not a fact if you find a boat cut by going through ice, you usually find she is more or less cut on both sides? A. That is usual, yes.

Q. If a boat were tied up with one side to a dock in a place where there was a good deal of drifting ice, wouldn't you think that was a 4317
more likely explanation of her being cut on just one side that way? A. That would be a good explanation.

Mr. Englar: That is all.

By Mr. Jayne:

Q. In that event, captain, there would be no action of the water to throw the ice up, so the cut would be at an angle of 15 degrees to the water line? A. No, sir.

4318 Q. In that event the mark would be on the water line, if the ice cut her when she was laid up, is not that correct? A. Yes, sir.

Q. Assume, captain, that the ice we are talking about is flowing up the river with the tide, and that the boat is going across the river from Edgewater to 95th Street, and is obliged, assume that the captain has stated he was obliged to head in to the tide so that his boat would be going across at an angle, and that ice is coming up the river, would the ice strike on the starboard side of his boat, would he be meeting the force of the ice on the starboard side? A. If he was——

4319 Q. Going from Edgewater to 95th Street, the ice was coming up the river and he was headed down the river to some extent to keep with the current, in that case the boat would be at an angle to the New York shore, headed partly down, the same as a swimmer swimming against the tide does not swim straight along, but on an angle; in that case where would the marks be on the boat? A. If he was running to the southward of the ice, it would touch his starboard side.

Q. And the other side would not receive the pressure of the ice? A. No, sir.

4320 Q. The ice would be coming up on that side, if he proceeded through the ice that way the water on that side where the pressure is would be thrown up, and the ice on that side would be thrown up, wouldn't it? I mean these cakes of ice would pile up there, would they not? A. If it is small cakes of ice they will float on the surface of the water, and the surface of the water will be higher at the bow stem than it will be on the quarter.

Q. And of course the more load there was in

the boat, the more she was down by the bow, the higher the mark would be on the boat, isn't that so? A. Yes, sir. 4321

Q. Now, when he turns around and goes the other way, it would be the port side of the boat that would be exposed to the ice, with the ice running the same way, isn't that so, when he came back? A. Yes, sir.

Re-cross examination by Mr. Englar:

Q. In other words, if you are running across the tide through ice you only get damaged on one side of the bow, is that right? A. That depends on who is steering the boat. 4322

Q. You know as a matter of fact if there is any ice that amounts to anything, no matter which way the tide is, you will get, you will have ice touch you on both bows, won't you? You know the boat and the ice will both drift along with the tide, both of them, isn't that so? A. Oh, yes, the ice always drifts with the tide.

Q. Always what? A. Always drifts with the tide.

Q. So does a boat, she makes some leeway all the time? A. Yes, sir. 4323

Q. So if there is any considerable amount, any considerable field of ice, and you went through it, even if you were going across the tide, your boat would be scratched on both sides, wouldn't it? A. If there is ice on both sides of the boat, it would have to scratch both sides.

By Mr. Axtell:

Q. I believe you stated in the beginning that it is true that a boat can nose through ice on both

4324 sides tenderly without scratching very much, if she is careful to go slow? A. Yes.

Q. It is possible to put a rake like that in her bow if she leaned over to the starboard a little and raked along a floating field of solid ice, isn't that right, the upper edge of the corner of the ice would hit right in the wood and could make a rake like that; is that true? A. It is possible to make that mark there with ice.

Mr. Axtell: That is all.
Mr. Jayne: That is all.
Mr. Englar: That is all.

4325

LE ROY A. BLOCK, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. What is your occupation? A. Marine surveyor and consulting engineer.

Q. How many years' experience have you had? A. About 22.

4326 Q. What sort of experience have you had? A. From an apprenticeship in a shipyard, as machinist fitter, and other various lines of experience until the present; in fact, almost every type with the exception of naval architect, which I do not claim to be.

Q. Did you make a survey of the "Linseed King" on the 22nd of December, 1926? A. I did.

Q. Where was she lying at that time? A. When I first saw her she was lying at the bulk-

head at 254th Street, Riverdale, and later on the pier at the foot of 95th Street, North River. 4327

Q. Is this a copy of the report you made? A. Yes, sir.

Q. With that to refresh your recollection, can you state accurately the measurements of the vessel, the character of material that she was made of, and so forth? A. Yes.

Q. Will you please do so? A. The boat was made of clear white cedar planking on oak frames with an oak keel. The planks at the turn and flare of the bow where she was stove in on the port side was 1⅛ inches thick. The frames at that point were at 15 inch centers, and fastened with galvanized square ship nails, at 4 inch centers. The boat was 42.5 feet long between perpendiculars, by 10 feet molded beam, by 4 feet deep. 4328

Q. What does deep mean? A. It means the distance from the top of the keel to the under side of the top deck at the center of the boat.

Q. That is as though it were a bowl, for instance, in the measuring from the bottom of the bowl to a line drawn across the top, is that right? A. No, the boat has what is known as a sheer or a sweep in the bow and stern. 4329

Q. Yes. A. And this is at the center of the boat it is usually measured, and it is from the under side where the deck strikes the side of the boat, because the deck has what is known as a camber or slope, and it is not measured at the under side of the top of the camber, but at the deck where it strikes the side. That is 4 feet.

Q. All right. A. She was fitted with a 40 horse power Lathrop engine, and I noticed that she was numbered or documented with the

4330 United States Department of Commerce as 10 tons gross and 7 tons net, her official number being No. 224,512.

Q. Did she have a cabin on her? A. There were the remains of a cabin that was badly broken up, and knocked apart.

Q. Is that part of it? (Referring to a window sash in room.) A. I cannot recognize it as such.

Q. It looks like it? A. It looks like it, yes.

Q. Were there windows in the side of this cabin? A. Yes, there were windows on both sides.

4331 Q. How many? A. As I recollect, there were 9 windows on each side from the pilothouse to the after end of the cabin. There were two doorways just abaft of the pilothouse, which stuck up about 2 feet higher than the top of this cabin structure.

Q. What were the measurements of those windows, those doors? A. They were about——

Q. Didn't you measure them? A. Yes, I did. I have not my memorandum here. One of these reports is missing. The doors, as I recollect, were about 2 feet.

4332 Q. Is this a copy of the other report, of the one of the 23rd of December? A. No, there was another one besides that. I made a subsequent report after that. The one you have is December 24th; along in the early part of January I made a report.

Q. Is this a duplicate I hand you? A. No, this is a year later. This is a copy of the first report; then I made a subsequent survey. That is recently, about a month ago.

Q. Have you any notes? A. Not with me. I can only speak from my recollection.

Q. Did those doors in the front open in or out? 4333
A. I do not remember.

Q. Do you remember anything about the doors in the stern? A. Yes, there was a sliding hatch at the top of the stern, and I believe two doors which opened in at the top of a short flight of steps.

Q. How about these windows in the side, some of them had chains, did they? A. There were, as I recollect, two windows on each side at the forward end and two at the after end that did open, could be opened.

Q. How about the other five? A. I made an 4334
attempt to open the other windows or sashes that were left in; I could not move them. I do not know whether there were any means to open them or not.

Q. Were there any windows missing? A. Yes.

Q. Were the glasses all broken out, or any of them missing? A. Some were broken out and some were still intact.

Q. Did you measure the floor space in this boat? A. Sir?

Q. Did you measure the floor space in this boat? A. No, I did not.

Q. Did you, at my request, upon this blue print 4335
measure the space in the top of the cabin? A. Yes.

Mr. Englar: What blue print is it, Mr. Axtell?

Mr. Axtell: Exhibit 6 of the petitioners.

Q. Did you measure the life preservers? A. Yes.

Q. One of which has been marked for identification? A. Yes.

4336 Q. What is the square footage of a life preserver? A. I have a note there, a memorandum of figures.

Q. Is this the note you are referring to? A. Yes, sir.

Mr. Axtell: Exhibit RR is the life preserver that is marked for identification.

A. The cubical contents of the space occupied roughly by one life preserver would be .733 cubic feet.

4337 Q. Folded in this fashion, that is the usual fashion in which life preservers are stored for use? A. Yes, sir.

Q. They occupy 2 square feet, is that right? A. Approximately, yes.

Q. It would be a little over 4 inches thick? A. Yes.

Q. And if it were in a boat it would be aloft something like this? A. Yes.

Q. Did you figure how many such shaped life preservers could be stored in the top of that boat, the top of the cabin, yes or no? A. Yes.

Q. How many? A. 68 under the roof.

4338 Q. Did you make any calculation as to the number that could be put on her back seats? A. Yes, piled up one tier would be 13 on each side at the after end.

Q. That would be 26? A. 26.

Q. A total of how much is that? A. And 5 under the forward locker compartment where the gasoline tank was in front of the steering wheel, making a total of 99.

Q. Were there any under there when you saw the boat? A. When I first saw the boat, yes.

Q. How many? A. I do not know. I saw 4339
the police pull several out of there.

Q. So you figure she could carry 99 life preservers? A. Yes.

Q. Stored if all the space available was filled? A. Yes.

Q. Have you had anything to do with the construction or upkeep, repairs or surveying of boats of this character, that is, launches or motorboats 30 or more feet long? A. Yes, I had to do with a small motorboat that was purchased from the Texas Company by the New York Trap Rock Corporation, that had a half open cockpit; that 4340
is, the engine space in the forward half of the cockpit was closed in, and the after half with a pair of towing bitts was open. She was used for ferrying men and towing between Tomkins Cove on the west side of the Hudson just above Haverstraw across to Verplank's, which is just below Peekskill on the eastern shore.

Q. Were you connected with that corporation? A. Yes, I was there acting as superintendent for a year.

Q. Was that an open boat or did it carry men below? A. Both places. The forward half of this so-called cockpit or open space was covered, 4341
and the after end was open.

Q. Do you consider the exits on this "Linseed King" sufficient for men to get out, if they were carried in large quantities, carrying life preservers with them?

Mr. Englar: Just a moment. I do not think the witness is qualified to pass on that question. He said he had to do with one boat that was used for a similar pur-

4342 pose. He says that was largely an open boat. I do not think anything has been brought out as yet to qualify him to pass on exits.

The Court: Well, of course, if his experience has been limited, it will go to the weight of his testimony.

(The last question was repeated by the stenographer.)

By the Court:

4343 Q. Have you had any experience, or have you given this subject any thought? A. I have given the subject considerable thought.

Q. You have? A. Yes.

Q. You think you can advise the Court of your opinion with relation to such a situation? A. Yes, I could.

The Court: All right, proceed.

By Mr. Axtell:

4344 Q. What is your opinion about it? A. My opinion is there was not sufficient exit for a full load of people in a boat of that sort.

Q. Do you think those windows could be used by men to get out of in case of an emergency?

Mr. Englar: Just a moment; that was not the purpose——

The Court: They were not designed to get out of.

Mr. Axtell: I thought they were.

The Court: I did not think so. I did not think any of those windows were de-

signed for men to get out of. There were exits fore and aft for that purpose. 4345

Mr. Englar: Yes, sir, and we also had these fitted so they could be used as emergency exits. They were not intended for ordinary use, but in case of emergency they were fitted so they could be removed easily.

The Court: All right, objection overruled.

Mr. Englar: And they were so used at the time.

(The last question was repeated by the stenographer.) 4346

A. No, I do not, not properly.

Q. Why? A. Because the natural thing would be to put a life preserver on, and the only place possible to do that would be in the body of the boat, and to try to get through a sash 15 or 16 inches wide like that with a life preserver on, it would be impossible.

Mr. Axtell: Mr. Englar, you are not a very large man. Would you mind putting this on and let me measure you with it? 4347

Mr. Englar: Get one of your associates, Mr. Axtell.

Mr. Axtell: All right. I am not picking a big man.

(Mr. Axtell places life preserver on a gentleman in the court room.)

The Court: What do you intend to do now?

Mr. Axtell: Just see what the circumference is.

4348 Mr. Englar: I do not think it makes any difference because he has not got the life preserver on, you have got it hanging loose.

Mr. Axtell: Do you think a man has got time to tie it on, do you think some of those men in there would tie it on for him?

Mr. Englar: I do not know; as long as the record shows the facts.

Mr. Axtell: That shows 4 feet 8 inches in circumference.

4349 Now, what is the circumference of the hole you are supposed to get through? He is supposed to get through with the frame out, if the hole sash is out of the way, that is, the man breaks the chain and gets the whole thing out, it leaves a hole 15 by 22. That would be, twice 15 would be 30, and twice 22 would be 44. This hole inside where the glass is is 17 x 11½.

Q. Now, assuming that there are 63 square feet available in front of the engine and aft of the engine in the entire boat, allowing 2 square
4350 feet for each passenger sitting down on the seats, and that that 63 feet took up all the space that was not occupied by people sitting or by exits, could you state whether that space would be adequate for 50 people to stand in and put on life preservers? I am limiting this to the number that concededly were permitted to be carried. A. No.

Q. That would be a ratio of one foot and about .40 square feet to each person, wouldn't it? A. About.

Q. And taking a ratio of, I am taking a set space of 8 square feet; how many people would you have to put into that space in order to get 50 into 63 square feet, that would be 6, wouldn't it? A. At that ratio, about 6 people, yes, sir. 4351

Mr. Axtell: Multiply 6 by 8 and you would get 48 or pretty close to 50, the number you figured on as the number in the boat. Now, will any six men in this room come up here? I will let you nominate them, Mr. Englar.

Mr. Englar: You select your own men.

The Court: There are six men right there. 4352

(Mr. Axtell place on the floor a rectangular frame of wood within which six men stand.)

Mr. Axtell: We will put this at the level of the seats, which was about here (indicating slightly below the waists of the men standing within the frame). Put your overcoats on, and I am going to put on life preservers after that.

(The six men put overcoats on and stood within the wooden frame above referred to.) 4353

Mr. Englar: What is the size of the space you have?

Mr. Axtell: It is 8 square feet. Lift this up, and somebody hold the other end. Raise your hands up.

(The frame was raised to a point slightly below the waists of the men standing within it.)

Mr. Axtell: Now I will throw life preservers in.

4354 (Mr. Axtell throws life preservers on the men standing within the frame.)

The Court: I do not think you need to go any further.

Mr. Axtell: All right, that is enough.

Mr. Englar: Have the area of that space appear on the record.

Mr. Axtell: The area of that space is 2 x 8.

Mr. Englar: What?

Mr. Axtell: 2 x 4.

Mr. Englar: That is more like it.

4355 (One of Mr. Englar's associates measures frame.)

Mr. Englar: It is not 8 square feet.

Mr. Axtell: It is square feet from center to center. We are figuring on 48 men, and I think that would be a proper allowance for the two men that are not in there.

Mr. Englar: Let us have a statement on the record of what the actual measurements are.

The Court: Two men not in there? There were six in there.

4356 Mr. Axtell: There were 6, but on the score, on the ratio of 50 men, 6 men would only make 48.

Mr. Englar: Now may we put on the record the inside measurements?

The Court: All right, state it.

Mr. Englar: The inside measures 3 feet 10½ inches by 1 foot 10 inches. That is the inside measurements, Mr. Axtell.

Mr. Axtell: Yes.

The Court: That is the rectangle used

for the purpose of making the demonstration? 4357

Mr. Axtell: Yes, it is made by 2 x 1 stuff, and the bolts in the center are on 2 and 4 foot centers. That is the way it was made.

Q. Are you familiar with any custom or practice of equipping boats with what is known as watertight bulkheads or air tanks? A. Yes.

Q. What is the custom or practice in that respect? A. The custom is that if the boat is to be what is known as an open cabin boat, which this boat was, is to have one watertight bulkhead at the forward end and one at the after end. 4358

Q. In a vessel of that character how far back from the stem would the bulkhead be placed? A. There is no custom as to that; that would suit the designs of the architect that laid it down.

Q. What is the purpose of the bulkhead? A. A watertight bulkhead, also known as collision bulkhead in the case of a collision.

Q. Would it sometimes be placed back at the point where the riggers, I guess you call it the shoulder breast? A. Usually at the forward end of the cockpit. 4359

Q. In this instance it would be, if this thing is drawn one inch to the foot, approximately 8, 7 feet back? A. It would be about here, at the forward end of the cockpit.

Q. Assuming that is one inch to the foot, how far back would it be? A. 6 or 7 feet.

Q. 6 or 7 feet back from the stem? A. From the stem post.

Q. How far back did you find those holes in

4360 the starboard and port bow of this boat? A. The hole in the port side started 48 inches from the front of the stem post. The starboard one, I do not see the memorandum of that here, was about 7 feet aft——

Q. You have not any measurement of it? A. Not here. I have the size of it.

Q. I do not want your guess, Mr. Block. A. I have no memory of that; that is, I have no memorandum of that here.

Q. Is there any custom or practice of putting metal sheathing on wooden vessels that are to be used in the winter time around this harbor?

4361 A. Yes.

Q. What is the custom or practice in that regard? A. Usually they sheath from the turn of the stem, or forefoot, up to the upper guard or molding at the deck line.

Q. Just indicate to the Court on this picture, Exhibit LL, what you mean by that. A. These life preservers are in the way.

Q. You mean clear from the bottom? A. From the bottom up to the gunwale molding.

Q. Right to the top? A. Right to the top.

Q. How far back from the bow does this metal

4362 sheathing usually extend? A. There is no set rule on that; usually anywhere from 4 to 10 feet, depending on the shape of the boat.

Q. Is there any custom or practice with regard to how many people can ride on a boat of a given size? Is there any rule about it?

Mr. Englar: If your Honor please, we know that that is the subject of regulation by the Local Inspectors——

Mr. Axtell: Not as to this boat.

Mr. Englar: Not of a boat of this particular size. 4363

Mr. Axtell: And this use.

Mr. Englar: And use, either one.

Mr. Axtell: It is a different proposition with this boat.

Mr. Englar: At any rate, taking Mr. Axtell's theory, that if she were applied to a different use the Local Inspectors would determine how many people she could carry, it does not seem to me that is a question for custom or usage; that is a matter for the Inspectors to determine.

Mr. Axtell: Let us have that distinctly understood, just where we stand. The evidence here discloses clearly that vessels used for this purpose, that do not charge a cash fare, are never inspected by the Steamboat Inspectors as to anything. The only thing that is done is to take their measurement and give them a license number, that is all there is to it. Now, we are going to the root of the question, what do most people do in loading boats, how many do they carry? Is there any ratio between the size and the number of people that they carry? 4364 4365

The Court: I do not think it appears as yet that this witness has any special knowledge that will enable him to state that.

Q. Do you know anything about how they load these boats around here? Have you made any observations? A. Yes, I have observed them many a time.

4366 Mr. Englar: So have we all.

The Court: To what extent? With what purpose in view?

Mr. Axtell: Your Honor has also observed those, I suppose, and if you will take judicial notice——

The Court: What is the purpose in view?

Q. Is there any rule with respect to the seats, the number of seats available and the number of people in the load?

4367 Mr. Englar: Just a moment. I object to that, is there any rule of what character?

The Court: Rule as to the number of seats in a launch transporting passengers across the river without the requirement that they pay fare, is that what you mean?

Mr. Axtell: Well, not exactly.

The Court: I do not suppose the witness can tell whether there is a rule as to those things.

The Witness: Even with a fare, your Honor——

4368 Q. I do not mean a rule so much as a custom. Do you know if there is any custom, having in mind the number of seats available, as to the number of people that are transported in a launch of this kind?

Mr. Englar: It seems to me we are still faced with that question——

The Court: Let us find out if there is such a rule, let us get to the foundation of the rule. Find out what the rule is.

Do I understand you to say there is a rule? 4369
The Witness: No, there is no rule.

Q. Is there a custom? A. Yes, there is a custom.

Mr. Englar: If your Honor please, when we get to the custom, it does not appear that this witness knows anything more about the customs in that respect than any of the rest of us.

The Court: It does not as yet. It is easy enough to say there is a custom, but where there is a custom it must be based 4370
on facts.

Q. What opportunity have you had to make observations? A. At the various shipyards where boats are being built and fitted for ferry purposes, and for fishing purposes.

Q. What shipyard, what places? A. Almost every one in the harbor.

Q. Did you, as a matter of fact, go down to—A. Jacobson & Peterson, Bath Beach.

Q. To some place where they carried a lot of these men, pursuant to my instructions, and make observations, since this accident occurred? 4371
A. Yes, sir.

Q. And did you have some knowledge of the situation before that? A. Yes, sir.

Q. The Court wants to know how much opportunity you have had to make observations.

By the Court:

Q. Where did you go to make observations? A. At the various shipyards and boat yards here in the harbor.

4372 Q. Mr. Axtell said he sent you to some place. Where was it? A. Why, I went to the Consolidated Shipbuilding Corporation's plant, that is up on the Harlem River.

By Mr. Axtell:

Q. Wasn't you telling me something about the Standard Oil place in Bayonne, where they carry people across the Kill von Kull? A. Yes, but that is a boat already built, of course; it is in service.

4373 Q. I know it is; that is what I mean. You cannot observe how many people get in a new boat that is being built, you have to observe it in a boat that is in service. Now, how do they run those boats?

The Court: Even with these casual observations, I do not think this witness can establish a custom. If you had a man who ran boats of this character, it would be a different thing, but it does not seem to me that a man can go down and look at a few boats and say how the men segregate themselves or how they seat themselves in

4374 boats, and come back into court and swear that there is a custom in relation to the manner in which it is done.

Q. Did you observe how they carried them in the boats used as ferries across the Kill von Kull?

Mr. Englar: That is the same thing. Any of us can go down and watch the ferryboats and see what they do. I do

not think it makes the witness an expert on that. 4375

The Court: I do not think I ought to permit what he has observed about these things in relation to the transportation of people. Custom is established by those engaged in that particular kind of business. If he were engaged in that business, then of course I would consider it, but it does not seem that I ought to give very weighty consideration to the observations of a man who simply goes down and sees how the thing is done by someone else and then comes in court and swears it is the custom. 4376

Mr. Axtell: I think the rule has been expressed by the Circuit Court of Appeals in the Third District: "While evidence of custom is not binding upon the Court or jury, it is admissible as some evidence to guide the Court or jury in forming its conclusion."

The Court: That is where there is a custom, but here it does not appear as yet.

Q. Is it a fact that the Standard Oil Company and a lot of others transport their workers, carry them across the Kill von Kull in certain kinds of boats? A. Yes. 4377

Q. Have you seen those boats in operation? A. Yes, sir.

Q. Are those open boats? A. Yes, sir.

Q. Is it a custom or not to furnish each man with a seat?

Mr. Englar: Just a moment——

The Court: Now, what makes a custom?

4378 Mr. Axtell: What is ordinarily provided for people by other employers. If these people have done less than the average employer, then it is some evidence to consider on the question of what was their duty.

The Court: In other words, what I meant to be understood as saying a moment ago was his observation in relation to the manner in which these persons or corporations transported their workmen, that that does not establish a custom, in my
4379 estimation. It is not entitled to much weight. If you can bring the transporters here, the boatmen, who will say that there is a general understanding or general custom in relation to how it shall be done, why then, that is an entirely different thing.

Mr. Axtell: Of course, I think I get your Honor's point. It is really a question of who testifies to it. If the owner of the boat came in here and said he gives a seat to every passenger, his evidence would be competent. It might be objected to on
4380 the ground that he is just one of a number of men, but here we have a man who has gone around and made observations as to the manner that men are transported to and from their work at other places around the harbor and the Hudson River, whether they are closed boats or open boats, and all that sort of thing. That was the point I made, but I will not persist if your Honor does not think it is admissible.

The Court: I do not think it establishes

a custom to have him go around to dif- 4381
ferent persons and see how they do things. Objection sustained.

Q. Do you think that a boat that is permitted to be filled up, all the space between the seats, with the sides glassed in, with small exits such as we have here, is reasonably safe for men to use in crossing the Hudson River in the winter time, or any time?

Mr. Englar: Just a moment. I object to that because it involves a lot of elements on which I do not think this witness is 4382
an expert at all.

The Court: You can cross examine him about it. He is a marine surveyor and consulting engineer and has to do with boats a good deal more than I do. He may answer and you can cross examine him about it.

A. What is the question?

(The last question was repeated by the stenographer.)

4383

A. No.

Q. Would you say she was seaworthy, having in mind the load of 86 men, and her length? A. No.

Q. Would you say she was seaworthy? A. I would not.

Q. Would you say she was not seaworthy? A. I would.

Mr. Axtell: Your witness.

4384 Cross examination by Mr. Englar:

Q. What boats have you ever designed, Mr. Block? A. As I stated to begin with, I am not a boat designer or naval architect; I have not designed boats.

Q. Have you ever had any ferryboats under your supervision? A. I had this ferry launch under my supervision that I mentioned, the "Little Billie".

Q. That is the only one you ever had under your charge? A. Yes, sir.

Q. What was her name? A. The "Little Billie".

4385 Q. Do you think that this boat, the "Linseed King", did not have buoyancy enough to carry 86 or 87 people? A. I do not say she did not have buoyancy enough; I think she did.

Q. You think she did? A. Yes.

Q. Is it your testimony that a boat becomes unseaworthy as soon as you put a glass cabin on her and let people ride inside of it? A. All depending on how many people are carried.

Q. Well, just let us take that general question first. Is there anything in your judgment which makes a boat unseaworthy merely because

4386 she has a cabin with glass windows and she carries passengers inside of it? A. No, that does not make her unseaworthy.

Q. Do you say a boat is unseaworthy if every passenger does not have a seat? A. No, I do not say that.

Q. Do you say she is unseaworthy if people are standing in the aisles between the seats? A. All depending on how many are standing.

Q. You do not say the mere fact some people are standing up in the aisles between the seats

makes her unseaworthy? A. Not some people, no. 4387

Q. You know that is the situation we have on the ferryboats in the North River, crossing the Hudson, all the time in the rush hours? A. Yes.

Q. They do not give every passenger a seat? A. No.

Q. Sometimes there is a big crowd of people standing between the seats on the two sides of the cabin, are there not? A. Yes.

Q. When you first saw this cabin on top of the "Linseed King", it was more or less distorted, wasn't it? A. Yes. 4388

Q. You would not expect window sashes— A. That is after the accident, I have ridden on the boat when it was all right.

Q. I am talking about after the accident. A. Yes.

Q. When the cabin was distorted, would you expect the sash to work in and out of the frames very easily? A. The moving windows did move all right; that is how I discovered that four of them on each side worked.

Q. Which worked all right? A. The two end ones on each side. 4389

Q. Even after the accident they worked in and out all right? A. Yes, sir.

Q. The others stuck, you say? A. The others appeared to me to be secure and firmly fastened; I do not know that they did work at all, or were intended to work.

Q. Did you try them all? A. I tried all the windows that remained on the starboard side of the house.

4390 Q. How many were there altogether? A. I think 6 or 7; the glass was not in all of them. Some were just the frames.

Q. Is it not a fact that if you had this cabin distorted that might easily interfere with the sash going in and out of the frame? Is that or is that not a fact? A. That might be a fact, yes.

Q. Have you ever had anything to do with carrying passengers except on this "Little Billie"? A. Yes, I have; I have recently been working on the designs of a ferryboat——

4391 Q. Has she been built? A. No, she has not.

Q. You have not carried any passengers on her yet? A. No; she is not laid down yet.

Q. So, outside of the "Little Billie", you have never had anything to do with carrying passengers, have you? A. Not on small boats, no.

Q. And all the basis you have for your testimony here today is the experience you have had with that one boat, and what you have observed going around the harbor, like anybody else? A. A general experience with an eye for just such things, yes.

4392 Q. Your general experience wasn't in carrying passengers, was it, except in that one case? A. No; I have not had any particular ferry launch experience except as I outlined.

Q. How long did you run this launch up at Tomkins Cove? A. A year. I did not run the launch; I was merely superintending the running of it.

Q. You were superintending the running of it? A. Yes.

Q. Is that right? A. Yes, sir.

Q. Are you sure you superintended the running 4393
of it, or did you just look after the repairs of it? A. I particularly made up the schedule of trips for it, laid down regulations for the captain, what duties he was to perform, and had them endorsed by the president of the corporation and the superintendents at the two plants that that boat served.

Q. The "Little Billie"? A. The "Little Billie".

Q. What size boat was she? A. 60 feet.

Q. How wide? A. I do not remember offhand.

Q. 60 feet over all? A. No, about 60 feet between perpendiculars, maybe a little more, 64 or 4394
65 feet.

Q. When she was built? A. I do not know without looking it up; I do not remember.

Q. Do you know where she is registered? A. As of what port?

Q. Yes. A. Yes, she is registered in Albany as of Tomkins Cove.

Q. She is registered in Albany? A. She ought to be there. (Referring to a book in Mr. Englar's hand.) I particularly had her put in there.

Q. Here is the register of merchant vessels, see if you can find it. A. No, she would not be in the 1926 issue; she would be in the 1927 issue, because 4395
I asked Mr. Gent, the superintendent, to go to Albany and register her himself as the owner of that boat.

Q. Was she a new boat? A. I think she was about 4 years old.

Q. What was her name before she was called "Little Billie"? A. Well, I think it was the "Ursa", if I am not mistaken. I can find it for you in a minute. (Looks at book.) No, she is not in here under that name; evidently the Texas

4396 Company, who owned her, did not have her registered. I know she was not registered. I particularly looked that up and she was not registered. She was built for the Texas Company.

Q. And this company you were with bought her from the Texas Company? A. Yes, sir.

Q. Do you know what they had used her for? A. What the Texas Company used her for?

Q. Yes. A. A small ferry launch.

Q. Where? A. At Port Arthur, Texas.

Q. Now, when you used her up at Tomkins Cove, how many men did you carry across at any
4397 time? A. I put a maximum of 30 men, I laid down a rule she wasn't to carry more than 30 men.

Q. And that was all you considered she could safely carry? A. In the cockpit, yes, in the open cockpit.

Q. She did not carry any in the house? A. They did carry them there, but I did not figure the house in at all.

Q. So that with this boat about 64 feet long you figured she could not carry safely more than 30 men? A. Yes. My reason for that was she
4398 only had one exit, into this house; that the engine was located under this house; that there were noxious gases coming off that engine, and that in case of a collision the men could not properly get out of that house. So that is why I eliminated the house.

Q. So you did not carry any in the house? A. She did carry them there, but I did not approve of them there. I just made provision for the open part of the boat.

Q. As I understand you, then, your judgment

was you should not carry any men inside at all? 4399
A. That is right.

Q. But they should all be carried outside? A. Yes, sir.

Q. How big was this cockpit? A. The entire cockpit, closed and open?

Q. Yes, the cockpit where you carried the men. A. The open part was about 20 feet long by about 12 feet wide.

Q. As I understand your testimony, you are really opposed to carrying men inside an enclosed cabin at all, is not that so? A. Yes, I am.

Q. You think they ought to be carried out on 4400
deck? A. Yes.

Q. And if anybody takes the opposite view, you just don't agree with them, isn't that so? A. I don't agree with them.

Q. Now, you say that the planking at the bow of this boat, the place where the break was on the port side, was 1⅛ inches thick? A. That was the good plank, third from the gunwale strake or top section in the center of that break was exactly 1⅛ inches thick.

Q. Did you measure the planking anywhere else on the boat? A. Yes.

Q. Was it 1⅛ all the way through? A. No, 4401
it was thicker at the center of the hull.

Q. How thick? A. 1⅜.

Q. But you are positive up there at the bow it was only 1⅛? A. 1⅛.

Q. That is, the boat is still in existence, and I suppose the planking is still the same thickness now as it always was? A. Mr. Hagen saw me measure it.

Q. What did you measure it with?

4402 Mr. Axtell: You mean Mr. Hagen, the counsel?

The Witness: Yes, sir, you were up there and saw me.

Q. What did you measure it with? A. A scale, a steel scale.

Q. You gave some testimony in this case in connection with the valuation of this boat, didn't you? A. Yes.

Q. She was a good boat as far as her hull was concerned, wasn't she? A. A good boat;

4403 in what respect?

Q. I say as far as her hull was concerned, wasn't she a good boat? A. Yes, she was a good boat.

Q. Strongly built? A. Yes.

Q. A good stout boat, wasn't she? A. Yes.

Q. Now, as she came out of the water, were you present? A. Yes, sir.

Q. Did you see any leaks in the boat except the damage on her port and starboard bow? A. Yes; there were quite a few leaking seams.

Q. What did you attribute them to? A. Pounding in the water for the two days she had laid in

4404 the water.

Q. And also being raised in the slings would cause some of that? A. She had some hog in her, some bend, known as a hog in her when she come out of the water.

Q. But you attribute that to her being raised full of water in the slings? A. I presume that is what caused it, some of it, yes.

Q. That would be a natural result of raising her in that way, would it not? A. Yes.

Q. Was this the type of boat that is ordinarily 4405
used to take out fishing parties? A. No.

Q. You think it was not? A. No.

Q. Did you testify before the Commissioner as follows, page 115: "To what extent was there a market for vessels of that character in December, 1926? A. There is always a market for all types of motor vessels in the winter, and even at that time, as such boats are used by commercial concerns, by fishing concerns, by people who do fishing off the coast here and take parties out, and for ferry service by industrial concerns, and so forth"? A. I did so testify.

4406

Q. But I understand you to say now this is not the type of boat used for fishing parties? A. As she was at the time, no, not with her house and fitted as she was. No, she would not be used in that way as either a ferryboat or a fishing boat; she would be changed to make her suitable.

Q. That is, suitable in your opinion? A. Yes.

Q. But you did testify here that there was always a market for this type of boat, even in the winter time, as such boats are used for commercial concerns and by people to take out fishing parties? A. I still say that.

4407

Q. But your explanation is that for that to be true you would have to change the type of the boat? A. Changes would have to be made to the boat to make her suitable.

Q. And your complaint about the boat simply is that they carried men inside the cabin, that is what it comes to, does it not? A. That they carried too many men inside the cabin, and there was not deck space enough for the men to get out and to be out on.

4408 Q. You think the percentage of enclosed space was too large with reference to the deck space? A. Yes.

Q. About bulkheads, do you mean to testify that boats that are used to carry passengers around the harbor always have watertight bulkheads? A. I do not say they always have, no. I say they should have, and most of those that I have observed do have.

Q. Have you had occasion to survey many boats of this type? A. No, not many.

Q. Then your judgment as to what they have
4409 or don't have in the way of bulkheads would not be particularly good, would it? A. It would be limited.

Q. Now, about sheathing, the same would apply to your judgment as to whether they have sheathing or not, wouldn't it? A. No, I have seen enough of the ice and general river conditions in this port to know of a certainty what the sheathing conditions are.

Q. What I am asking you is whether you know whether boats of this type do in fact have sheathing or not, not whether they should, but whether they do? A. Some do and some do not.

4410 Q. Do you know of any rule governing the position where a collision bulkhead should be? A. In a ferry type of launch?

Q. No, in any boat; is there any rule of construction that applies to that? A. There are rules, yes.

Q. Who promulgates or lays down those rules? A. The Standardization Societies.

Q. If there is such a rule, what is it? A. The rules are arbitrarily fixed according to the ship's lines and the purposes for which they are to be

used. Such as Lloyds Yacht Register lays down 4411
a certain set of rules which are paralleled by those laid down by the American Bureau for the same class of vessels.

Q. Is it not a fact that the general rule applying to that subject is that the bulkhead collision shall be not less than 5 per cent. of the distance aft from the stem? A. That is the rule in steamships, in steam vessels.

Q. The rule is the collision bulkhead, that the distance the collision bulkhead is aft of the stem should not be less than 5 per cent. of the vessel's length? A. That is in steel steamships, yes. 4412

Q. Do you know of any different rule which applies to launches? A. I know of such a rule, yes; I know that it is an arbitrary rule.

Q. You say you know of such a rule; you know of some other rule applicable to launches? A. Yes. Lloyds Register of Shipping has such a rule which has been followed by the American Bureau of Shipping.

Q. As to launches? A. As to yachts and power boats.

Q. What is that rule? A. That rule is arbitrary.

Q. No matter how arbitrary it is, let us hear 4413
it. A. It don't lay down any such rule; there is no rule; but it is mentioned in their set of rules.

Q. Then you mean there is no rule? A. There is no laid down rule, no.

Q. How do you get this depth of 4 feet? From what point to what point did you measure that? A. From a line taken across at the center of the boat where the small running deck or side deck, up to the coaming or gunwale, strikes the side of her, where the so-called deck timbers are mortised

4414 into the margin timber on the under side, it is a straight line down to the top of the oak keel at that point.

Q. There are a lot of ferryboats in the harbor, single deck ferryboats, aren't there? A. Yes; all the Electric Ferries are single deck boats.

Q. And there are quite a few ferries that carry both automobiles and passengers that are single deck ferries, aren't there? A. Yes, there are.

Q. Do they have much deck space outside the cabin? A. Yes, they have considerable.

Q. You mean where the vehicles are? A. And

4415 at either end.

Q. They have very little, as a matter of fact, do they not, at either end? A. No, they have considerable space back of the gate up to the door.

Q. How much? What percentage to the space inside? A. On a screw propeller ferryboat?

Q. If you like. A. Of course, they have more. Most of the railroad ferries which I have in mind have about 20 to 25 per cent. on each side and all around of deck space.

Q. On each side and all around? A. Yes.

Q. What do you mean by "all around"? A.

4416 At the four corners of the boat, in front of the ladies' cabin and in front of the men's cabin, port and starboard forward, and the same thing aft.

Q. You mean at either end? A. At either end, yes.

Q. Have not you seen ferryboats here in the harbor where the house came practically out to the end of the boat, not more than 10 feet away, or so? A. Yes; those little boats that run over from South Ferry over to Hamilton Avenue, some of them are so designed.

The Court: At the end of the boat or the sides of the boat? 4417

Mr. Englar: I am speaking of the open space at the ends of the boat. There is no space at the sides, that comes right up straight.

The Witness: At the ends of the cabin.

Q. So that there are ferryboats where people ride inside the cabin almost entirely? A. Large steel ferryboats, yes.

Q. What exits do they have from those? A. Large doors at each end.

Q. That is, one door at each end? A. One door at each end, or doorway, with swinging doors usually in them. 4418

Q. About how long are those ferryboats? A. The small ones that run over to Brooklyn?

Q. Yes. A. About 120 feet.

Q. Have you any idea of what their maximum load is? A. No; they are not certified as to maximum load, merely the number of life preservers.

Q. Do you remember the names of any of those ferryboats? A. No, I do not. I have ridden on almost all of them, but I cannot recall.

Q. They are not limited as to the number of men that can travel on them, are they? A. No. 4419

Mr. Englar: That is all.

Re-direct examination by Mr. Axtell:

Q. Will you look at this Rule 70 and tell me if that is the Local Steamboat rule with respect to where bulkheads are placed on freight vessels about which Mr. Englar was questioning you?

4420 A. Yes, that is what he had reference to, evidently, as far as I can see.

Q. That does not say 5 per cent., that says 15 per cent., vessels over 500 feet long, and 12 per cent. in others. I ask the Court to take judicial notice of it. Could those holes in that bow have been caused by ice? A. Yes.

Q. Assuming that there was nothing else of a solid character discovered by anybody in the river at the time, and there were large quantities of ice, some of it thick and some of it thin, could you say with reasonable certainty that it was ice?

4421 A. Yes, I can state with quite reasonable certainty that it was ice.

Mr. Englar: You said 15 per cent.; this does not say 15 per cent.

Mr. Axtell: I do not know what it is.

Mr. Englar: It says 1/15.

Mr. Axtell: I will offer the rule in evidence.

(The same was received in evidence and marked Claimants' Exhibit SS of this date.)

4422 By Mr. Englar:

Q. Just a moment. In connection with the last question Mr. Axtell asked you, I would like to ask a further question. I am reading from page 117 of the testimony when you were examined before the Commissioner: "Did you observe both the port bow and the starboard bow of this vessel? A. Yes. Q. Was there any damage to the starboard bow? A. No." A. Not at the bow.

Q. I was just reading your testimony. A. Yes, 4423
that is correct; it wasn't at the bow.

By Mr. Axtell:

Q. Where was it? A. As I recollect, about 12 feet aft of the bow on the starboard side; at the bow on the port side.

Q. Mr. Block, taking these two pictures, Exhibits 2 and 3, can you state whether that is the damage that you saw? A. Yes, that is it.

Q. And is this an enlargement of the same hole? A. Yes.

Q. What was the distance from the place where 4424
the letter G at the end of "Linseed King" was to the bow of the boat, the stem? A. That is about 3 feet at that point.

Q. And that hole as it was there at the time was within 5 feet of the stem, wasn't it? A. On that side.

Q. On the starboard? A. At the turn of the sheer, yes.

Mr. Axtell: That is all.

(Witness excused.) 4425

DENNIS V. MAHONEY, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. Did you come up from the Custom House and bring certain records? A. Yes, sir.

4426 Q. Did you produce under subpoena the certificate of admeasurement, the certificate of ownership of a certain vessel recorded at the United States Custom House at New York, the name of which is the "Reliance"?

Mr. Englar: That is our new boat; that is the same old argument we have had. I object to it.

Mr. Axtell: I do not offer this on the theory that they made a better boat than they had before, but simply that this record is just as admissible to prove to this
4427 Court what is the usual and customary practice of furnishing bulkheads in boats of this character as the other 16 that they introduced here.

The Court: You want to show that that "Reliance" has a bulkhead?

Mr. Axtell: Yes.

The Court: That is a boat that was subsequently acquired?

Mr. Englar: Yes. I do not think boats that have been built since this disaster are any criterion of what the rule was at
4428 the time of this disaster.

Mr. Axtell: I think the beam and length of this boat are material and relevant, considering with that the payroll showing of their company, which will be produced here to show how many people were employed then and how many now, how many they carried across the river and how.

Mr. Englar: As a matter of fact, the rules of the Inspectors have been changed

since this accident, evidently based on this accident. 4429

Mr. Axtell: No, there is no rule about this whatever.

The Court: I never thought anything done subsequently might be considered as bearing on the question of damage which caused the injury or the negligence.

Mr. Axtell: That, of course, is a pretty well settled rule, and I would not want to jeopardize the record by introducing such testimony if there is objection, unless it was on other grounds.

The Court: I will receive it tentatively. 4430

Mr. Axtell: I will ask that it be marked for identification.

The Court: Very good; I will mark it for identification.

Q. These are official certified copies you can leave here, are they not? A. Yes, sir.

Mr. Axtell: All right, you can take your book, and thank you very much.

The Court: I said I would take your testimony, and you might see me later on as to the bearing it has. 4431

Mr. Axtell: I have offered them for identification.

(The same were Claimants' Exhibit 88 for identification of this date.)

The Court: Very good.

Mr. Axtell: We will look up the law on that point later.

4422 The Court: We will suspend now until 10:30 tomorrow morning.

(Adjourned to Thursday, January 26, 1928 at 10:30 P. M.)

New York, January 26, 1928.

Met pursuant to adjournment at 10:30 A. M.; present as before.

4433 MARIE MARQUES, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. Where do you live? A. 50 North 5th Street, Paterson, New Jersey.

Q. Who was your husband? A. Frank Marques.

Q. When were you married? A. April 24th.

Q. What year? A. I think it was 1925.

Q. How large a man was he? A. 5 feet 7 or

4434 8 inches.

Q. How much did he weigh? A. About 150 pounds.

Q. Do you know whether he went on the "Linseed King" on the morning of December 20th? A. Yes, sir, positive.

Q. Was he regularly employed, or was he engaged that day? A. He had been working there seven months.

Q. What was he doing? A. That I cannot possibly say, what kind of position he had.

Q. Was his body ever found? A. Yes, sir, it was, two months after. 4435

Q. Where did you identify it? A. I identified it in the Jersey City Morgue, at Mr. Higgin's funeral undertaking establishment.

JOHN J. BROWN, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examniation by Mr. Axtell: 4436

Q. Were you employed by the Spencer Kellogg Sons at one time? A. Yes, sir, several times.

Q. How long ago? A. The last time about three or four months.

Q. Did you operate the "Linseed King"? A. Yes, sir.

Q. How many different times? A. At nights, to take her across the river.

Q. Did you go on her nights? A. On nights, and ran her across the river.

Q. Would you be doing other work? A. Yes, sir, they would take me off and put me on the boat. 4437

Q. On how many occasions did you do so? A. Practically right along until the fall, when the ice came and they tied her up and the day man would not run her any more.

Q. Who was the day man, Marty Dinkel? A. Yes, he tied her up two days after the report of ice.

Q. Two days after ice was reported she was laid up? A. Yes, sir.

4438 Q. She was running during those two days? A. Yes, sir.

Q. Did you run her during those two days? A. No, not that time.

By the Court:

Q. Laid up two days after ice was reported; what year was that? A. (No answer.)

By Mr. Axtell:

Q. That was 1925? A. Yes, sir.

4439 Q. Then she was operated two days in the ice? A. Yes, sir.

Q. You are referring to the year 1925? A. Yes, sir.

Q. Do you recall whether the boat was laid up in January, February or December, or what part of that year? A. Laid up in the early part of the year, right before the holidays.

Q. Mr. Stover said January 5th. A. They might have put her on the ways, but she was in the water on the holidays.

Q. That is what he said. January 5th is after

4440 the holidays, isn't it?

Mr. Englar: I object to this witness being led.

The Court: He ought not to be led on this point at this time.

Q. Did you keep any count of the number of men you carried on each load? A. Yes, sir; when the ship was not in, we would carry 45, 50, perhaps 60; then you would have a good load.

Q. How many did you carry when the ship

was in? A. I never ran it while the ship was in. 4441

Q. Did you ever see the loads they carried when a ship was in? A. Yes, from 80 to 100.

Q. From 80 to 100? A. Yes, sir, on the morning trip.

Q. How long a time was this going on? A. All the time for the last year or two back.

Q. Did you work there at all while Mr. Medlicot was in charge of the plant? A. Yes, I ran the "Linseed King" that time.

Q. Did you carry loads like that while he was there? A. No, we never did.

Q. Was there any regulation issued to you as to how many you should carry or should not carry, or did you do as you pleased? A. No, sir. 4442

Q. You never had any instructions? A. No instructions whatsoever.

Q. What was the last date you operated that boat, do you recall? A. I could not say.

Q. What? A. I could not tell you what date; September or October sometime.

Q. You were discharged a number of times, weren't you? A. No, sir, never been discharged.

Q. I thought somebody said you were? A. No.

Q. You were away from there a number of times and came back? A. Yes, I worked on the Lakes in summer and came there in the winter. 4443

Q. You lived on the hillside at the plant? A. Right in front of the plant.

Q. Do you remember the day of the accident, December 20, 1926? A. I heard about it that night. I was working on the docks that day, and that night they told me.

Q. Whereabouts? A. Luckenbach's Docks.

Q. Brooklyn? A. No, right over there. They have a pier at Shadyside.

4444 Q. What were you doing on Saturday or Sunday? A. Practically doing anything, loaded lumber cars, putting boats in.

Q. You made some statement to some newspapers that were widely quoted about the time of this accident, didn't you? A. Yes, I have.

Q. Your statements were reported in the papers? A. I have made that statement.

Q. You were talking quite a lot about the boat and other things. A. That was the truth I told about the boat.

Q. Did you notice ice in the Hudson River on the 20th, the day of the accident? A. There was
4445 ice, and ice the day before.

Q. Are you sure of that? A. Positively.

Q. How can you be positive? A. We were hauling boats in Luckenbach's, and you cannot haul a canalboat in if there was ice.

Q. I thought you said you were hauling them in. A. We were hauling them in.

Q. Now, Mr. Brown, you ought to begin to realize you are making it very hard for anybody to understand anything you say. Please answer these questions so we know what you are talking about. You said there was ice in the river on
4446 the 20th? A. Yes, sir, there was ice in the river on the 20th.

Q. And you said there was ice the day before? A. Yes, sir, several days before.

Q. Then you said something about canalboats, you could not haul them in if there was ice? A. We could not haul them in if there was ice inshore.

Q. Do you mean you were trying to haul them in and could not? A. Yes, sir.

Q. You said there was ice in the Hudson River

on the Jersey shore two or three days before the accident? A. Yes, sir. 4447

Q. Describe the condition the "Linseed King" was in while you were operating her in 1925, I believe you said September? A. I believe it was September. I am not positive.

Q. What was her condition at that time? A. In the first place, she had a very bad control, uncontrollable, with a load on; she acted like a wedge, like a snow plough going through snow, she would go one way or the other.

Q. I never ran that kind of a snow plough. A. That is the kind of boat she is. 4448

Q. She would shoot around, is that it? A. She would slew around; if you put the wheel hard aport she would go to starboard, and half the time the rudder would jump out of the shoe, the shoe would jump off the bottom of the boat, and the rudder would be meeting this way (indicating).

Q. Did you have trouble with that? A. When I came across at night I had to throw the oar over the stern.

Q. You mean you had a sweep? A. Yes, sir.

Q. How did you secure it? A. Held it to the side of the boat, the navigation way of taking it in. 4449

Q. You did that alone? A. I did not do it alone. I was only helping on that boat nights. Them people who ran the boat nights had no license, and they got me as a deckhand to cover them up.

Q. Are you a licensed man? A. Yes, sir.

Q. They do not have to have a license to run that boat anyway, did you know that? A. They don't? I don't know.

4450. Q. Anybody could run that boat. How was her hull, good, strong and sound? A. Yes, sir; there was nothing the matter with the hull; she was well built and sound.

Q. Did she leak any at all? A. She did considerably through the stuffing box. Some days I was there they put a siphon in, a siphon for siphoning it out; it ran in.

Q. When was the last time you worked there? A. I believe September.

Q. You have not discussed that siphon with anybody here, have you,—you never mentioned a
4451 siphon to me before, did you?

Mr. Englar: I object to what he told counsel.

The Court: Sustained.

Q. What do you mean by a siphon anyway? What siphon are you talking about? A. A steam siphon, steam coming down, and they put the siphon in to blow the water out.

Q. Located on the boat? A. No, it was on the dock, and they put it on the boat.

Q. When was that siphon put there? A. On
4452 the dock?

Q. Yes. A. I do not know when it was put there. It was put there long before my time for emergency; when she came back full of water they siphoned her out.

Q. Had it ever been used before on the boat? A. I have not seen it used, only when I was there.

Q. How long a period was that? A. Three days while I was there every morning.

Q. How much water was there those mornings? A. Up to the floor.

Q. Did you ever operate her when she had water in her bottom? A. I certainly did. 4453

Q. How much? A. 4 or 5 inches; perhaps more.

Q. Was there a bilge pump in the front of that boat? A. No, it was worked aft, back.

Q. You have seen boats with a pipe working forward to the front so you can pump the front end of the bilge as well as the back end? A. Yes, sir.

Q. Was there such a pump here? A. There was not.

Q. If there was water in the boat how did she ride, by the head or by the stern? A. She always ran down, she was practically a nose diver, like a wedge. It would not jump over the water, she would go underneath it. 4454

Q. Did you ever have any experience in building boats? A. 30 years working with boat builders and repairing them myself.

Q. What do you think of the design of the "Linseed King"? A. It was not designed right for that kind of work. She is built for speed work.

Mr. Englar: I object. I do not think he is qualified. If my friend can qualify him, all right. 4455

Q. You have 25 years' experience? A. Yes.

The Court: Do you want to interrogate him?

Mr. Englar: Yes.

4456 Preliminary cross examination by Mr. Englar:

Q. What ship builders did you work with? A. Mr. Peterson.

Q. How long were you with Mr. Peterson? A. Seven years; he is at 108th Street and North River.

Q. Doing what? A. Helping him build yachts, motorboats.

Q. Are you speaking of Jacobson & Peterson? A. No.

Q. What is the name of this place? A. It is not there now.

4457 Q. What were you, a ship's carpenter? A. No. I was simply helping doing ship work and installing engines.

Q. What sort of work? You were not a carpenter helping to install engines? A. Building the boat from the keel up.

Q. You built boats? A. Worked with him.

Q. You say you were not a carpenter? A. I was his helper.

Q. Are you a carpenter of any kind? A. Yes, sir. I can take and repair a boat.

Q. Have you ever worked as a carpenter? A.

4458 No.

Q. Have you ever worked designing boats? A. No.

Q. What you were, as a matter of fact, was a laborer in that yard? A. Yes, sir, I was his helper. My line of work is installing engines in a boat.

Mr. Englar: I object to his testimony on design of boats.

The Court: Objection overruled.

Direct examination by Mr. Axtell (continued):

Q. How was the clutch on that boat, all right? A. No good; take her and throw her 500 feet and she would carry through 300 feet before she would make a catch.

Cross examination by Mr. Englar:

Q. How long did you work for Spencer Kellogg in September, 1926? A. I could not tell you how long I was working on the dock. I was working on the dock and ships and working the boat three or four days.

Q. Prior to that what were you doing? A. Working on the ship, and working on the roof, and on the cake.

Q. Working on seed cake? A. Yes, sir.

Q. Now, after working on these other jobs on the dock you say you ran the boat for three or four days? A. Yes, sir.

Q. What part of the day? A. From six in the morning to practically six at night.

Q. You ran it yourself? A. Exactly.

Q. Nobody else on the boat with you? A. No, sir.

Q. You said a little while ago something about your being a deckhand on the boat? A. That is nights. They would take me with them to go across.

Q. You ran this boat 24 hours, did you? A. No, 6 in the morning to 6 at night.

Q. During the day? A. Yes, sir.

Q. And was that all the work you did at that time during those days? A. That is all I done, run the boat in the day time.

4462 Q. Were you working at night during that time? A. Yes, working 6 at night to 7 in the morning, 13 hours.

Q. And you were also working all day? A. Not 24 hours a day, no. When I worked nights, I worked nights, and they got me to take the day job to run the boat.

Q. You say on two or three days you ran the boat in the day time? A. Yes, sir.

Q. Were you doing any night work at that time? A. No, sir, I was not.

Q. When was it you say you ran the boat at
4463 night? A. That was all that fall when I came back from the Lakes. I went down and got a job on the ship and on the dock.

Q. All of what fall? A. 1926.

Q. The fall when this accident happened? A. Yes, sir.

Q. About when did you start to work running the boat nights? A. Around October; I could not tell you what date.

Q. The early or latter part of October? A. The early part of October.

Q. Were you a regular night operator? A. No, I was not.

4464 Q. Who was? A. We had a fellow, Lang, and a fellow named Artie, night electrician and night machinist.

Q. When you say Marty, do you mean Marty Dinkel here? A. No.

Q. You do not mean him? A. No; he was not a night man. He was the day man.

Q. And the night man was named Lang? A. One Lang, and I cannot think of the other fellow's name. He was night machinist and the other was the night electrician.

Q. How long did you continue to go on the boat at night? A. Until the night boss said Mr. McHale gave orders to take me off the boat. 4465

Q. Gave orders for you not to go on the boat any more? A. Not to go on the boat any more, because I was to work a different shift.

Q. When was that? A. Previous to a few days before I took the day job.

Q. A few days before you took the day job? A. Yes, sir.

Q. And you took the day job in September? A. Yes, sir.

Q. Was it the early or latter part of September? A. I could not tell you. 4466

Q. And then you ran the boat in the day time for two or three or four days? A. Yes, sir.

Q. And then you never ran her after that? A. No.

Q. You never had anything to do with her after that? A. No.

Q. And you did not work for the company after that? A. No.

Q. Now, was it on these night trips you carried these 90 or 100 men? A. I never took and carried 90 or 100 myself on the boat. I would not.

Q. What is the most you think you ever carried on the boat? A. 45, 50, perhaps 55. 4467

Q. That is the most you ever carried? A. Most I ever carried.

Q. But you say that when somebody else was running the boat you counted these large numbers of men? A. Yes, sir, I counted many a time.

Q. How often? A. Three or four times I was standing there and the boat was coming in.

Q. When you were doing that what was your

4468 job at the plant? A. I was watching the roof that time.

Q. What? A. Working on the roof, taking care of the motors.

Q. Working on the roof of what? A. Of the dock.

Q. Taking care of the motors? A. Yes, sir.

Q. Were there motors on the roof? A. Yes, sir.

Q. Outside? A. Outside, little houses around them.

Q. The motors are on the roof in the open air?
4469 A. No, in a small house.

Q. Were you in the house? A. I could not be in the house; I had to go back and forth, four motors there, I had to go back and forth.

Q. What were you doing, oiling them? A. Oiling them.

Q. It was while you were making these trips back and forth between these motors on the roof all this time you counted these men? A. Yes, sir.

Q. Were you under any duty to count them? A. No, not told, nobody told me.

Q. You only counted them as a— A. Just
4470 watching. We used to call it the jag coming in.

Mr. Axtell: The boat was called a jag?

Mr. Englar: No, a jag of men; it is a nickname.

Q. You counted those men three or four times? A. Yes, sir.

Q. When was that, can you give us any idea? A. Shortly before I ran the boat.

Q. Shortly before you ran it in the day time,

you mean? A. Yes, sir, while I was working nights. 4471

Q. During about what period would you say you made these different counts? A. Just when the boats were in.

Q. Did these three or four counts take place during the period of a week, or a month? A. It might be two or three weeks, when the ships is in. That is the only time you count them.

Q. During the period of two or three weeks? A. Yes, sir.

Q. That was while you were on the night shift? A. Yes.

Q. That is correct? A. Correct. 4472

Q. You are positive of that? A. Positive.

Q. And during the night shift what were your hours? A. From 6 at night to 7 in the morning, 13 hours.

Q. You never counted the men from any position except from the roof of the wharf, is that right? A. That is the only place.

Q. Now, when you made these counts do you remember who was running the boat? A. Yes, sir.

Q. Who was it? A. Marty.

Q. This man back here? A. Yes, sir. 4473

Q. Marty Dinkel? A. Yes, sir.

Q. Now, you say during the three days you ran the boat the steam siphon was used every day, is that right? A. Yes, sir.

Q. Was it used every trip? A. No, he was not used exactly every trip, but every two or three trips they would take and use it.

Q. You used it yourself? A. No.

Q. Who got? A. They got the pipers to go and connect it up.

4474 Q. Who actually did the siphoning? A. The steam did, but they got the fitters.

Q. The steam fitters? A. Yes; they came and connected it and siphoned, and the next morning they did the same thing.

Q. That would be Mr. Johannis' men? A. I do not know his name.

Q. Every two or three trips you say they siphoned out the boat. I want you to describe what sort of apparatus it was the boat was siphoned with You say you are an expert mechanic; you just give us a full description of
4475 this machinery used to siphon that boat. You have installed engines? A. A pipe over the top, a small nozzle put in the bottom, the pipe and steam connection on the outside.

Q. I do not quite get that. Let us start at the boat. You say a pipe was put in the boat? A. Yes, sir.

Q. From the dock? A. The hose came off the dock in the boat.

Q. That is a rubber hose? A. Yes.

Q. Did you put it in the boat? A. I would take it through the window and connect it and
4476 they would take it through the siphon, and there was so much mud and dirt in the bottom, it would not——

Q. You took the hose in the boat. Where did you put it? A. Down behind the clutch; the most part where the water was, that was the only part open.

Q. You say you put it just behind the clutch? A. Yes, sir.

Q. You are sure about that? A. Yes, sir, alongside the clutch and behind the clutch.

Q. And then somebody on the dock would operate this siphon on the dock, is that right? A. They would turn the steam on from the dock. 4477

Q. Turn the steam on? A. Yes, sir.

Q. Would they turn the steam through the rubber hose? A. Through the rubber hose.

Q. Into the boat? A. Into the siphon.

Q. What do you mean by the siphon? Is that this rubber hose? A. A siphon is not a rubber hose.

Q. What is it, what does it look like? A. A couple of pieces of pipe connected together. If you have the pipe here I will show you what it is like, I will make one for you. 4478

Q. I want you to describe it. You say you are a good mechanic and instal engines; you ought to be able to tell us what this pipe is like. A. Give me a piece of paper and I will show you what it looks like.

Q. Just draw us a little sketch of this apparatus from the boat up to the dock.

(Witness did so.)

The Court: Are you all finished.

The Witness: Yes, it is right there. There is your hose and there is your siphon. (Indicating.) 4479

Q. As I understand it, this large object here standing up and down is the hose? A. No, sir, that is the pipe that goes in the bottom of the boat.

Q. You said that was the hose. A. That is the hose there leading to the siphon, steam goes here and blows it out.

4480 Q. Will you mark B, the pipe that goes into the boat? A. Right there. (Indicating.)

Q. And the letter B represents the bottom of the boat? A. The bottom of the boat and bottom of the pipe.

Q. So that was not a rubber hose, this pipe that went in the boat? A. The siphon was a pipe.

Q. What was it that led into the boat, an iron pipe or a hose? A. An iron pipe.

Q. It went right down to the bottom of the boat? A. Right down to the bottom of the boat

4481 to take the siphon.

Q. What was the rubber hose you told us a while ago you took into the boat? A. A steam hose.

Q. That went in the boat too? A. That connected on the siphon.

Q. This is the best picture you can give us of a steam siphon, is it? A. Yes, sir.

Q. That is the best you can do? A. Yes.

Mr. Englar: I ask that be marked for identification.

4482 (Marked Petitioner's Exhibit 16 for Identification.)

Q. I understand that this siphon had to be connected up? A. Yes, sir.

Q. By someone from the machine shop? A. Somebody from the place with tools to connect it.

Q. You could not do that? A. I did not have a tool to connect it with, I could not do it with my hand.

Q. Somebody had to bring tools down from the machine shop? A. Yes, sir. 4483

Q. I gather from this picture that you have drawn here that there was nothing on the dock in the nature of a pump, I mean a regular pump with valves? A. No, there was not.

Q. I mean there was nothing on the dock there that looked like a regular pump, such as we see ordinarily? A. Not where the boat was tied up, no.

Q. You worked under Mr. Medlicot, didn't you? A. Yes.

Q. Did you operate the boat for him? A. Yes, sir. 4484

Q. Didn't he ever tell you how many men to carry? A. No, that time we would practically only carry 15 or 20 at the most. There was only office help going back and forth.

Q. And that time you did not bring pressmen from New York? A. No.

Q. And no laborers? A. No laborers, just practically office help.

Q. You said you were a licensed man; what did you mean by that? A. Operator's license to take and carry passengers.

Q. What sort of boats are you licensed to operate? A. 65 foot, 15 ton boats, passenger boats. 4485

Q. Steamboats? A. Anything under 15 tons.

Q. You can operate any steamboat under 15 tons? A. Yes, sir.

Q. Did you ever see a steamboat under 15 tons? A. No.

Q. Where is your license? A. They went down with the boat.

4486 Q. What you have is a license to operate a motorboat? A. An operator's license.

Q. That is all you ever had? A. An operator's license.

Q. For a motorboat? A. To operate and navigate, 65 foot in length.

Q. Have you a license to permit you to go out in the harbor and operate a steam tugboat 65 feet long? A. Yes, sir, 65 feet, not in towing.

Q. Let us get this straight. As long as you do not do any towing you can operate a steam tugboat, anything up to 65 feet in length? A. Yes,

4487 sir.

Q. When did you get that license? A. The last license two years ago, I guess.

Q. Have you got one now? A. No, I did not have it renewed. It was lost on the boat.

Q. You got that here at the Custom House? A. Yes, sir.

Q. From the Steamboat Inspectors? A. Yes, sir, the Steamboat Inspectors' Service.

Q. They will have a record of your license down there? A. Yes.

Q. I understand from you that this boat was

4488 down by the head all the time? A. Yes, sir, any time you opened up she would go down by the head.

Q. And even if you had nobody on board? A. It would not be down by the head unless the gas tank was full.

Q. If you had this boat with nobody on her and had your gas tank full she would be down by the head? A. Down by the head, raise the stern.

Q. Suppose it was lying still, would it be down by the head? A. No.

Q. How would she lie then? A. About level.

Q. Not down by the stern at all if she was light? 4489
A. No.

Q. What experience have you had running boats? A. I run parties up the Hudson right along this last 20 years back.

Q. Did you own boats yourself? A. Yes, sir, I did.

Q. What was the name of her? A. I had the "Mimi."

Q. How big a boat? A. 22 feet.

Q. How long did you have her? A. About 4 years.

Q. And you used her running parties up the 4490
Hudson? A. I used to take out my own private parties, my own friends.

Q. What boats were you ever paid to operate outside of the "Linseed King"? A. Paid to operate the "Ulali."

Q. Who employed you to operate her? A. Capt. Dudley Tranafedi.

Q. Any others? A. Yes, sir. I ran the "Francis," I was paid to operate her.

Q. Who owned her? A. Capt. Dudley owned her.

Q. This Capt. Dudley, when did you start work- 4491
ing for him? A. Ten or twelve years ago, perhaps longer.

Q. Is he still alive? A. I believe he is. I see him about two years ago.

Q. Is he in New York here? A. No, in Jersey.

Q. What is his business? A. Still in the boat business, I believe.

Q. You say ten or twelve years ago you operated these launches for him? A. Yes, sir.

Q. For how long did that continue? A. Up to two or three years ago.

4492 Q. For a period of ten years you operated these launches for him? A. Yes.

Q. That was your entire business? A. That was my entire business.

Q. What was this man's address, Capt. Dudley? A. It is Edgewater, but the house number I cannot tell you.

Q. His business is owning and operating boats? A. They have a boathouse up there now in partnership with Mr. Wagenbrenner, I believe.

Q. Then I understand for a period of about ten years continuously you were a boatman here
4493 on the river working for this Capt. Dudley you speak of? A. Yes, sir.

Q. No question about that, is there? A. Not at all.

Q. That was not just an occasional job? A. Working steady as long as the weather permitted. In winter time he tied up, in ice, and I worked in the factory in the winter.

Q. I understood you to say in the fall of 1925 this boat was laid up just before the holidays. A. She was when the ice came down. She was tied up; whether hauled up, I don't know.

4494 Q. I am not talking about when it was taken up out of the water, but she was tied up just before the holidays? A. Yes, sir, just before the holidays.

Q. During this time when you were working nights, before you ran the boat in the day time, were you up on the roof of the wharf all the time? A. Only when the ship would be in.

Q. They only used those motors when there was a ship in? A. Right.

Q. Would you have occasion to be up there ex-

cept when the motors would be running? A. No, sir. 4495

Q. You would go up when they were running the motors, you would go up when you went on duty in the evening, and you would stay there all night? A. Stay until 7 o'clock in the morning, when you got relief.

Q. You got relieved at 7? A. Yes, sir.

Q. Where did this water come in the boat you had to siphon out? A. It used to come in through the stuffing box.

Q. Is that a hard thing to fix? A. It is in the water. 4496

Q. You consider if a boat is leaking through the stuffing box, that that is a very serious matter? A. Yes, sir, the way that boat was leaking it was.

Q. So what would you do with a boat like that, sell it; get rid of it? A. No, I would haul her out and repair it.

Q. You would fix it? A. Yes, sir.

Q. It is very easily fixed, if you get the stern out of the water, isn't it? A. Yes, if you get the stern out of the water you can do work.

Q. Where are you working now? A. I work at Luckenbach's, I was going there this morning. 4497

Q. Have you been working there steady? A. No, I only came from up north this week.

Q. Where have you been? A. Westport, New York.

Q. Where is that? A. Outside of Rouses Point, Lake Champlain.

Q. On the Canadian border? A. Yes, sir.

Q. Running a boat up there? A. Yes.

4498 Re-direct examination by Mr. Axtell:

Q. If I understand you correctly, this line represents a steam hose? (Showing witness a drawing.) A. Yes, sir.

Mr. Englar: Which line?

Mr. Axtell: I will explain it to you too.

Q. And there is a T at the top of a pipe? A. Yes, sir.

Q. And an exit on the other side across? A. Yes, sir.

4499 Q. And by shooting the steam across the T you suck the water through the pipe from the bottom of the boat, is that right? A. Right.

Q. This would be a better drawing, wouldn't it? (Showing witness a drawing.)

Mr. Englar: Just a moment.

(Mr. Englar examines the drawing.)

Mr. Englar: That is all right. I think you are a better artist than the witness.

Mr. Axtell: I did not draw it.

4500 Q. This would represent it, this would be the steam hose and T and the pipe you described on the boat, and the extension here, and your water shoots out here (indicating)? A. Yes.

Mr. Axtell: I offer that in evidence as a supplement.

(Marked Claimants' Exhibit SS in evidence.)

EVA LABIAK, called as a witness on behalf of the claimants, being duly sworn, testified as follows: 4501

Direct examination by Mr. Axtell:

Q. What is your name? A. Labiak.

Q. Did you have a relative on the "Linseed King"? A. Yes, my brother.

Q. What was his name? A. Victor Kriminsky.

Q. How do you spell it? A. I cannot spell it; I cannot read.

Q. Is that Polish? A. Yes, sir.

Q. Was he working for the "Linseed King", or the company? A. Yes, sir. 4502

Q. Was his body found afterward? A. No.

Q. How do you know he was on the boat? A. He was with another man; he went the same time, so the other man was drowned, both two men were drowned, his friend and he, and then they found his friend and bring him to Bellevue, and that friend he says——

Q. What was the friend's name? A. George.

Q. George what? A. I do not remember his name.

Q. Was he working for the company before, your brother? A. Yes, before he works, and he 4503 went a second time for the same time. He worked twice there.

Q. Was any pay check or money sent afterward? A. Yes. I got yet the money.

Q. You got yet the check? A. They say he has money, they come in the house and tell me I should go to get the money.

Q. How much? A. I do not know, three or four days left pay.

Q. You never did collect it? A. No.

4504 Q. It is at the company office? A. Yes, sir; they told me they would keep it till I come in.

Q. Did you look around for his body? A. Yes, sir, sure I did.

Q. Have you gone to the Morgue or made inquiries? A. I was looking all over and could not find it.

Q. Was he married or single? A. Single.

Q. Was he in good health at the time? A. Yes.

Q. No troubles, no reason for shooting himself, or anything like that? A. No trouble, he was all right.

4505 Cross examination by Mr. Englar:

Q. Did your brother live with you? A. He used to live with me, and afterwards he took rooms for himself, and he lives with the friend what he works together that time.

Q. At the time of this accident when you think he was lost, he was not living with you? A. No, he was not living with me, only every day he was in my house, came every day.

Q. In the morning or evening? A. When he comes from work.

4506 Q. You have no personal knowledge yourself as to where he went on the morning of this accident? A. Where he went on the morning?

Q. Yes. A. The same morning what happened?

Q. Yes. A. He went to work.

Q. You did not see him yourself? A. I did not. I see that man that went with him. The man say about three words and he died, and they took him in Jersey and bury him.

Q. When was it that your brother had worked for Spencer Kellogg before? A. Before he left about six months, and he went again.

Q. Was this the first morning he was with Spencer Kellogg the second time? A. No, he was working more than that. 4507

Mr. Englar: It ought to be possible to identify the man. Perhaps we have not the names straight.

Mr. Axtell: Victor Kriminsky.

Q. Did your brother go by any other name, or shorten his name? A. Nothing. This is his name, Kriminsky. My name was first Kriminsky, now it is Labiak, because I am married. 4508

Mr. Englar: That is all. We have located his name.

Mr. Axtell: Will you concede he was employed there?

Mr. Englar: I do not want to make a formal concession in the absence of Mr. Aldrich, but according to the records I have here it appears he was. I have no reason to dispute it.

Mr. Axtell: Let us have this list as long as we are on that subject, and see if we can determine about these men. We 4509
have, if your Honor please, proven 30 bodies recovered, 28 survivors, which makes a total of 58; that is definite. In addition we have proven Varouxaki, Roberts—I will give you a list, and you can check them on this, Mr. Englar.

Mr. Englar: That will be better.

Mr. Axtell: Varouxaki, Roberts, McEachin, and Burns and Kriminsky, (that is the last one), and Marques and Rawlins

4510 —Marques' body she said was found two months afterward in the Jersey City Morgue—Rawlins is missing. That makes 7 additional, making 65. Now, there are letters of administration taken out for Griffin, Martin, and McBean Ifill, John Castro, Andrew S. Murphy, John A. Turner, Fred Somner, Carlos Morales, Thomas Coyle, Clarence Visczay, Samuels, John Heap (his relatives live in England), Alader, Hertz, John Karkos, Martin, William Graham, Leobold——

4511 Mr. Englar: I will concede letters of administration are being issued in the city all the time, lots of them, and I do not see any object in reading a list like that in the record.

Mr. Axtell: Wisdom, Ransbn, Figbein, Rosa, Davis—these cases, Rosa, Davis, Biegel, Blaze and Kosg no letters of administration have been issued, but we have definite information they were lost, and that they were on this boat, but I do not believe we could prove it satisfactorily if it was a question of fact at isue, but we

4512 would like to have a statement from counsel for the petitioner as to which of these people, if not all, were employed by them.

Mr. Englar: Most of the people Mr. Axtell mentioned we never heard of. I am referring particularly to the last part of the list, the five men at the end who were mentioned, we never heard of.

Mr. Axtell: That may be true. We are inclined to think it is. The last four or five were casual employees.

The Court: Except Clifford Rawlins. 4513

Mr. Axtell: Except Rawlins, I did not mention him. If we could have from you, Mr. Englar, a statement as to which of these people you did employ and the date of their last employment, or whether they were engaged for that particular day——

Mr. Englar: We can give you that. Mr. Aldrich has been at the office with his secretary, and a girl from the Jersey plant, and they have been working all day on that.

Mr. Axtell: We cannot do it immediately. 4514

Mr. Englar: No, but we can by one or two o'clock.

Mr. Jayne: There was a list of employees to be here every day.

Mr. Axtell: Corroborating in part the suggestion of proof I made as to this list——

Mr. Englar: I submit you have not made any proof as to most of the people on the list.

Mr. Jayne: We have been asking for an employees' list for days and days and 4515 days, and every day you say it will be here the next day.

Mr. Axtell: We have photostat records of the Police Department of the Bureau of Missing Persons, and on this list there are seventeen of the parties mentioned on the foregoing list for which we called no relative to prove, for which administration papers have been issued, and this shows their record and shows these men were on

4516 that boat. It is not legal proof, but it is the proof an ordinary layman would accept. And the proof indicates there were about 90 people on this boat when she went down.

Mr. Englar: Am I to understand all this going in the record is to constitute proof that these people were on the boat?

The Court: There is no proof of that until you file this paper you intend to file this afternoon.

Mr. Englar: I am not going to file
4517 anything, but I am going to supply them with information. Mr. Axtell is reading a list in the record, but he could read 150 names——

The Court: I think it will be clearer when you submit this list of names this afternoon.

Mr. Axtell: I offer this photostat of the Police Blotter, the original of which was brought here yesterday.

Mr. Englar: What is it? I have not seen it.

Mr. Axtell: We have only one copy. I
4518 will let you look at it and I will have two more copies made immediately, and furnish counsel with one. I make formal offer of proof now of the pink cards of the Police Department showing the names of the identified bodies, 30 in number, that were taken from the pier. You have a copy of these.

Mr. Englar: Yes, we have a copy of those. How many have you there?

Mr. Axtell: 30.

Mr. Englar: We have 27. 4519

Mr. Axtell: There were three additional brought in yesterday, and I think they are added to the list.

(Marked Claimants' Exhibits TT-1, to TT-30 inclusive, in evidence.)

Mr. Axtell: I will offer the list of 28 survivors and ask these be marked in the same way, so they won't stray from our records.

Mr. Englar: I am willing they be marked for identification, and if they 4520 check with our list, I won't object. I want to be sure we have a complete set.

(Marked Claimants' Exhibits UU-1 to UU-28 inclusive for identification.)

Mr. Englar: Is that for identification?

Mr. Axtell: The same offer, subject to your checking.

NICHOLAS J. BRAZELL, called as a witness on 4521 behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Mr. Axtell: I would like to ask counsel for the petitioner if he intends to call Mr. Height as a witness.

Mr. Englar: I do not know. I cannot tell you.

4522 Mr. Axtell: He was the expert who examined the boat on the examination when it was taken from the water. He made statements of importance, and we want to know; if you do not intend to bring him, we will subpoena him.

Mr. Englar: I do not know.

The Court: I will permit you to call him if the other side does not.

Mr. Englar: I think from the statement of Mr. Axtell there is a misunderstanding. We did not employ Mr. Height.

4523 Mr. Axtell: Who did? Burlingham's office?

Mr. Englar: I did not. Mr. Axtell has access to Mr. Height as much as we have, but he gives a false impression by asking me that.

Mr. Axtell: I thought he was employed by your clients.

Mr. Englar: He never was.

Q. What is your occupation? A. Naval architect and marine engineer.

Q. Will you state your technical and practical
4524 experience? A. My technical experience consists of a degree from the University of Michigan, Bachelor of Science in Naval Architecture and Marine Engineering. Of course, prior to that, I had the necessary preparatory education, grammar school and high school.

Q. And practically? A. Practically I have been engaged since 1917 in the design and construction of vessels of all sizes. In this work I have been doing I had actual experience in construction, had experience in design. I have assisted and

been employed as scientific draftsman for certain 4525
shipyards, and I am now at the present time practicing naval architecture and engineering for myself.

Q. You have checked over the drawings of the "Linseed King" that were submitted in evidence by the petitioner here, blue prints marked Exhibits 6 and 5, and others? A. Yes, sir, I have.

Q. Have you attempted to check the values of the metacentric height, displacement and tons per inch of the "Linseed King" as given by Mr. Barrett in his testimony, utilizing the blue prints as prepared by him? A. I have. 4526

Q. What is the result? A. Based on the information as given, I check his results entirely, his figures.

Q. Does that assume that the boat is free from water? A. Yes, that does assume the boat is free from water.

Q. And if there was water to the floor boards, or three or four inches of water, what would be the difference in her load line with 83 persons in her? A. There is a question there with reference to draft. I have no information with reference to the weight of the hull, but it is reasonable to suppose that that vessel would float at that draft 4527
that he gave, 2 feet 10 inches, with that load, provided there was no water in the hull.

Q. If there was water in the hull how far down would that bring her? A. It would bring her down a distance such that the buoyancy displaced would equal the water inside the hull.

Q. Supposing it was up to her floor boards, one or two witnesses claimed she filled with water to her floor boards, how much would that bring her down by the hea[illegible], do you think? A. As far as

4528 bringing it down by the head is concerned, it would not bring it down by the head, because I compute the center of flotation of that water plane which is aft of the midship line of the vessel, and if water was in there it would tend to give it a trim by the stern.

Q. Supposing the front of the boat and the space in front of the boat, in front of the engine, and aft of the engine, were both packed as full of people as they could be, how would that boat trim then? A. As I recall the areas in the cabin, it would appear that the center of gravity of the
4529 people being placed in there would be forward of this center of flotation that I computed, and in that case the vessel would tend to trim by the bow.

Q. Can you give the Court some estimate of about how much she would go down more than normal under such circumstances? A. Yes, sir.

Q. She would go up in the stern and come down in the bow? A. Yes.

Q. How much? A. I compute the moment of trim one inch at that draft, and I believe my figures show if there were a moment of trim one inch approximately 2.23 feet tons at that draft,
4530 that means one ton of weight was placed at a distance of 2.23 feet from the center of gravity in a longitudinal direction of the vessel, we would have a trim of one inch. Of course as you increase your lever you also increase your moment and if you placed 1/10 of a ton 22 feet out from the center of gravity, you have the same moment or a trim of one inch.

Q. What metacentric height, upon the assumption of the correctness of the blue print drawings, did you calculate, and what was Mr. Barrett's

figure as the mean load draft beyond 2.10? A. 4531
Based on the data he gave me, and subsequent to his testimony he gave me a little information after his testimony, I computed the metacentric height at that draft to be 1.56 feet, and I think he got a little bit less 1.5.

Q. What does the metacentric height of a vessel indicate? A. The metacentric height is a criterion or index of initial stability.

Q. What do you mean by stability, and explain its application to vessels? A. Stability is the tendency of a vessel to place itself normal to the water plane, or the water surface at which it 4532
floats. As naval architects we consider stability is composed of two parts, that is, the first part the intensity of this tendency, which we will call the riding moment, and also the range of stability. By range of stability, in a certain instance we consider the maximum angle of heel the vessel can list, beyond which, if she is heeled a distance further, she will capsize or tend to capsize. I might qualify that by stating that while the range is not exactly a good criterion of stability, that definition I just gave you, a better criterion of range is angle of heel at which the maximum riding moment occurs. This is generally about half the 4533
degrees in range given by the former explanation.

Q. Of course, if you have a number of people on the ends on their feet, if standing on the boat, while upright, it is the same on the bottom as though there were bags of sand piled in the bottom, isn't that true? A. Yes, sir.

Q. What happens when the boat gets off an even keel and there is side pressure by the weight of these men leaning to one side; does that change the situation? A. Providing the center of gravity

4534 of the men on board, and the center of gravity of the bags and the weights are equal, their position in center of gravity is equal, and the men do not change their position, you have the very same effect.

Q. Their weight, part of it is above the deck level of the boat, of course? A. Yes; I am assuming under those conditions.

Q. In this particular craft there would be a rail of the boat, that is, the top or gunwale of the boat amidships, or forward of amidships, and that would probably come here (indicating) on the

4535 hip, where I am indicating? A. I believe that is about right.

Q. I am indicating say 2 feet 10 inches from the ground as I stand here. If the boat lists to one side and the crowd is packed in and they lean with it against the side of the boat, wouldn't that relieve some of the weight from their feet and put some of it on the side of the boat and tend to make her roll over more? A. No, sir.

Q. Mr. Barrett stated that a small metacentric height infers an easy riding and safe boat and is to be desired. I ask you if that is entirely true?

4536 Mr. Englar: I beg your pardon. I do not think that is a fair statement of what he said. He said you did not want too much or too little.

Q. I will accept Mr. Englar's amendment. What is your answer? A. My answer is no, that is not entirely true.

Q. Explain it. A. We consider a boat to be an easy riding or good sea-going vessel if her period of roll is long. The formula, I might say, for the

period of roll of a vessel when it is not under 4537
resisted roll, such as bilge keel or wind, which tends to resist the rolling movement, is given by a formula. T is to equal Pi times the square root of K squared, divided by GGM, wherein T is the time and seconds, Pi is the unit of circular measure, 3.1416, and K is the radius of gyration, G is acceleration, gravitational consonant you might call it, and GM is metacentric height. It is apparent if the metacentric height is small you get a longer period on the equation I quoted, but if you increase the radius of gyration you also increase your period of roll; if you decrease your 4538
metacentric height there is a tendency to decrease stability, and it is the practice to maintain a high metacentric height initially, but increase your radius of gyration, and with that end in view, you get a safe vessel and an easy riding boat. That is modern practice.

Q. What is the meaning of GM? A. That is the distance between the center of gravity and the metacenter.

Q. What do the letters stand for? A. G stands for gravity and M for metacenter.

Q. Gravity metacenter? A. Yes.

Q. Is the value of 1.5 GM a large or small GM 4539
value for this vessel with 2.10 draft loaded with 83 persons? A. I would say that that was a relatively small value of that height.

Q. How do the regulations of the marine standards committee apply? A. There have been many studies made with reference to stability, and the International Convention for Safety of Life at Sea have specified that the metacentric height must be such when a certain wind pressure acts upon a vessel it will not decrease the freeboard

4540 of the vessel greater than 25 per cent. They have relegated certain velocities of wind for various conditions of variation. They have set a wind velocity of 55 miles an hour on the high seas and 45 miles an hour on coastal districts and a velocity of 37 miles an hour on inland harbors and waterways. If you take a vessel at the condition stated, with a metacentric height of 1.5 feet, you will find that her freeboard will be reduced greater than 25 per cent., approximately 30 per cent., slightly in excess. This shows that that vessel was just on the verge of—it was tender—and would not
4541 comply with the regulations of the International Convention.

Q. If you add 10 people to the load and put water in the bottom you would have a worse condition, would you? A. Yes, but putting water in the bottom would be a serious proposition on the free surface condition.

Q. Assuming a broad-side wind at 37 miles an hour, what would you say would be the angle of heel of this vessel at 2.10 mean draft and with 83 passengers aboard? A. The angle of heel?

Q. Yes. A. The angle of heel would——

Q. Or have you answered that sufficiently? A.
4542 I do not know. I think it is about 24 degrees.

Q. What is the purpose of freeboard? A. Freeboard is an index of the sea-going qualities of the vessel which insures reserve buoyancy for the vessel, and it also is a criterion of the range of stability. With a higher freeboard I think it is apparent you can roll your vessel over to a greater angle and have her return to normal position than if the freeboard was small, because the deck might go under water. I think that is apparent.

Q. This vessel, if you sunk her below the chime,

which was the corner of the V-bottom, as compared to most vessels of this character, was practically straight up and down, wasn't she? A. Yes, her sides were almost perpendicular. 4543

Q. With increased load, would that increase that tendency or decrease her stability as compared with vessels that have the sloping sides? A. That would decrease her stability.

Q. In other words, with the increased load you would have no increased resistance of the water in the roll? A. Oh, I get your idea—yes.

Q. What is considered the minimum range of stability for safety of vessels of this character? A. 60 degrees is the angle—that is, the ultimate minimum. 4544

Q. What was the range of stability of this vessel as she was constructed at 2.10 mean draft, assuming their figures? A. There is only one way that can be determined, that would be determined by calculations which I did not make.

Q. Can you give your opinion of this range? A. I can give my opinion of it, yes, sir.

Q. Please do that. A. I would say the range of stability on this vessel would not exceed 45 degrees.

Q. Is that degrees or per cent.? A. Degrees. 4545

Q. How would the GM be affected by one additional man standing on the flush deck outside? A. I made some figures on that. I recall that the metacentric height would be reduced by an amount of .04 feet—just a minute until I check that—.04 is correct.

Q. If there were four it would be four times as much, I suppose? A. Not exactly; it does not go up directly as your ratio.

Q. You are speaking of the deck level? A. I

4546 am speaking of the flush deck, not the top of the cabin.

Q. Would it be practical at all to carry men on top of the cabin? A. Practical?

Q. Yes, would that be feasible? A. It could be done, but it certainly would not be desirable.

Q. That would change her stability? A. It would be a worse condition than placing them on the flush deck.

Q. One man on the deck level raised from the floor level would decrease her stability, and it would decrease it still more to put men on the
4547 roof? A. Right.

Q. Would you consider this "Linseed King" a seaworthy vessel with 1.07 gravity metacenter? A. No, I would not.

Q. If this vessel were loaded to 8 inches freeboard would you consider this vessel seaworthy? A. Absolutely not.

Q. How could this vessel be down to a freeboard of only 8 inches, corresponding to a mean draft of 3 feet 4? A. The draft given by Mr. Barrett of 2 feet 10 inches is dependent upon the weight of the load of the people, the weight of the hull, the weight of the engine, and I fancy the
4548 fuel he had on board. It is possible that he did not figure—he gave the weight of the men, I believe, as 160 pounds, but that weight could be increased, the men could weigh more than that, there could be more than the number of men he stipulated, which would tend to bring it down, and there could have been water in the hold, which maybe he did not consider, or the weights he figured might have been in error, or he might have omitted some weights in his hull or engine, or other structural parts of his vessel.

Q. How many passengers weigh one ton? A. 14, considering 160 pounds per man. 4549

Q. At what point would the action of free surface phenomenon be at the most critical as regards stability? A. That apparently would be at that point where the water in the bottom would rise to the level of the chime line.

Q. Now, will you take one of these photographs, this one is Exhibit MM.

Mr. Englar: That is one of the exhibits that was put in merely to show the shape of the bow, and I will ask you not to use it for any other purpose, except on that point. 4550

Mr. Axtell: I do not know that such a limitation can be put by counsel.

Mr. Englar: It was put on by the Court. You admitted the photograph was touched up.

Mr. Axtell: I will take another one. This one is not in evidence. I hate to add to the record, but I want to show the chime line.

The Witness: Get the drawings; that will be better. 4551

Mr. Axtell: All right. Which one do you want?

The Witness: The line drawings. I believe that is the one you have.

Q. (Handing witness a blue print.) What I want you to explain to the Court is the chime line and what you mean by that last statement. A. That is this knuckle line.

The Court: Mark chime line there.

4552 Q. That is the term? A. Yes.

Q. When she reaches that point? A. Yes.

Mr. Englar: Put an arrow there for the chime line. Put the letter C there or something to identify it.

The Court: What did you mark it, merely letter C?

The Witness: Just C, yes. That runs from stem to stern of the vessel.

Mr. Englar: The witness marks the chime line with C on Exhibit 8.

4553 Q. Would this tend to reduce the stability? A. Yes, very materially.

Q. What would you expect at this point? A. I would expect the vessel would be very, very tender.

By the Court:

Q. What would reduce the stability? Give me a lead on that. A. If you have a free surface of water, I will give you a sketch——

Mr. Englar: Water inside the boat, you
4554 mean?

The Witness: Water inside the boat.

Q. That is it, water inside the boat in addition to the other load? A. Yes. We had better qualify that. That is your boat (indicating); if that surface of water is free, this is the centroid of the figure, but as far as the weight of that water is concerned, it does not act there, it acts at its metacentric, which, by the way, I believe, was the cause of probably 75 per cent. of our disasters at sea, the phenomenon of free water.

By Mr. Axtell: 4555

Q. The water, in other words, shifts? A. Yes, its virtual center of gravity is at its metacenter.

Q. That is the same phenomenon as shifting cargo, perhaps? A. No, it is very much more serious than that.

Q. I did not know anything could be more serious. A. Yes, indeed, free water is.

Q. Does the Steamboat Inspection Service require bulkheads in this type of vessel, such as the "Linseed King" was? A. I believe not.

The Court: That already appears, doesn't it? 4556

Q. They do not require anything about these vessels, as a matter of fact, do they? A. No.

Q. They do not come under regulations? A. No.

Q. Of the size vessels under their jurisdiction, at what percentage of the length of the vessel do they require a collision bulkhead? A. They specify vessels under 200 tons coming under their jurisdiction, that the collision bulkhead shall be placed not less than one-tenth the length of the 4557 vessel from the bow, not less than that.

Q. That, applying to a vessel of this sort, would be 4 feet 6 inches? A. Yes, sir, but here is the point. As the length of the vessel increases over 500 feet, they specify the bulkhead shall be not less than 1/15, so as you reduce your length your percentage of bulkhead spacing increases.

Q. In a shorter vessel the bulkhead would be back further? A. Yes; that is, utilizing their scheme of bulkhead subdivision.

4558 Q. And it may be further back in the larger vessel, though? A. Yes.

Q. In similar vessels to the "Linseed King" that you have designed, do you specify collision bulkheads?

Mr. Englar: I object. He did not say he designed any similar kind.

Q. Have you designed vessels of this kind? A. Yes, I have designed vessels of that character.

Q. Intended to be used for such purpose? A. The harbor type of vessels, small pleasure craft,
4559 yes.

Mr. Englar: Have they ever been built?
The Witness: Yes.
The Court: It is now competent.

Q. Did you put bulkheads in them? A. Yes, sir.

Q. Why? A. Because I wanted to reduce the hazards of navigation, and by just putting a collision bulkhead in your odds for loss are 2 to 1. You have the possibilty of ramming a vessel, or
4560 the possibilty of a vessel ramming you, and there is an even break. If you have a collision bulkhead in your vessel you are safe.

Q. How many do you put in? A. I generally put in two.

Q. One in front and one in the stern? A. Yes.

Q. Small vessels like this? A. Yes; the after peak bulkhead I always put forward of the propeller.

Q. When you design a vessel do you use the bulkheading rules of the Steamboat Inspection Service? A. No, sir, I do not.

Q. Why not? A. Because I consider them in- 4561
adequate. As a matter of fact, on the vessels that I have checked utilizing the Steamboat Inspection Rules for subdivision, for vessels around 200 feet long, with a height specified under the regulations, you will find that if you flood even one compartment the vessel will founder.

Q. In other words, there would not be air space enough there— A. For reserve buoyancy, yes.

Q. How do you establish your bulkhead spacing? A. I use the International Convention, British Board of Trade regulations.

Q. If a client came to you and insisted on a 4562
Local Steamboat Inspection Service bulkhead spacing, what would you do about it? A. Refuse to design his ship.

Q. Why? A. Because I would consider I had turned out an unsafe vessel.

Q. What is your solution then of the safety problem?

The Court: Is it necessary to go into the matter with so much minuteness?

Q. Is there a custom or rule in providing exits for passengers on vessels of this character? A. Not on vessels of this specific character, but there 4563
is on immigrant vessels, vessels carrying immigrants, passenger boats.

Q. What is the rule there? A. The British Board of Trade rule requires for every five passengers contained in a compartment that the width of the exit must be 2 inches.

The Court: I do not quite see the necessity of going into that. It makes it more difficult for me when I come to examine this record.

4564 Q. Do you consider the exits on the "Linseed King" as shown by her blue prints prepared by Mr. Barrett as adequate for a cargo of people, 83 people? A. I do not. I might qualify that by saying that while the exits would be all right, still, loaded with 86 passengers, I consider the approaches to these exits inadequate, therefore, if you include the exit——

Q. How about the doors in the rear? Should they open in or out if they are proper? A. They should open outboard.

Q. Is that a uniform rule in boats? A. Yes—

4565 well, that is a custom.

Q. Even on a sailing sloop? A. That is the custom.

Q. Or on yachts manned with three or four, they open out? A. Yes, sir, but of course you can find a place where a door opens inboard, but as a general rule and custom they all open outboard.

Q. Is there anything in this suggestion that they carry sheathing on vessels that work in the ice? A. Yes, there is.

Q. Is there a custom or practice in that respect among shipbuilders? A. There is a custom and practice, yes.

4566 Q. What is it? A. They generally provide a vessel with a wooden hull protection on the bow, such as sheathing or a deflector or an apron. Some of them even fit up a big ram.

Q. On a boat of this size used for this purpose how much sheathing do you think she ought to have? A. I just do not understand you.

Q. How far up should her sheathing come above the load she is to carry, above her water line, with the load she was carrying?

Mr. Englar: He has not said she ought to have any. 4567

Q. In your opinion should a boat like the "Linseed King," if she were to be used in the winter with ice in the river, have sheathing on her bow? A. Yes, sir.

Q. Even if not used in the winter, and there was no ice, but only for logs, and considering she had no bulkheads, would you consider she should have sheathing? A. No, she should not. I would not recommend that.

Q. If you were going to protect her from ice by sheathing how high would you bring it above the water line if loaded? A. I would carry the sheathing to the deck line. 4568

Q. Up to the gunwale? A. Clear up.

Q. How far back from the bow? A. I would run that sheathing two-thirds the length of that vessel aft.

Mr. Axtell: Here is a photograph showing the hole. It is not in evidence. I offer this photograph. They have one showing the hole, and we have not, and we are always borrowing it. I offer this. 4569

(Marked Claimants' Exhibit VV in evidence.)

Q. Now, looking at this hole in the port bow, in your experience with the construction and building of boats and such things, are you of the opinion that the blow that caused that hole would not have sunk the boat if there had been metal sheathing on her bow at that point? A. I would be of the opinion that she would receive damage

4570 enough—in the case of the ordinary placing of sheathing on that vessel—to sink that boat, but the sinking would probably be delayed.

Q. It would take quite a little while to go down? A. Yes, sir.

Q. And she might be towed in or rowed in before she would get to the bottom? A. No.

Q. The crew could get out and push her in if it was not too cold, if there were metal sheathing over the hole, and if they got out of the front and into the stern, they would put her bow out of water?

4571

Mr. Englar: I object.

The Court: That is too speculative. I do not see how you could give an opinion with relation to it that would be of any weight.

Mr. Axtell: I think it is too.

Q. I show you Exhibit 2. Assuming that streak along there is scratched, the paint is off, in part, and a part is gouged through the wood a distance I think of 22 inches, and about an inch across, having in mind the blue prints of this boat, and
4572 the assumption as to load and stability proven figures, can you give an opinion as to whether or not that rake in her side there just above the metal sheathing might have been caused by the vessel on a slightly uneven keel sliding along at fair speed hitting the edge of a floating lot of ice, possibly one cake, quite long in the river before she went down? A. I should say that would be quite possible.

Q. Mr. Barrett ventured the opinion that line could not possibly have been put on that bow

without her stern being out of water 15 degrees, I understood. What do you say about that? A. I would say that statement was in error. 4573

Q. Have you checked over the blue prints and his drawings and calculations with a view to rendering an opinion on that point? A. Not directly for any opinion on that point.

Q. You have checked them over, and you are giving your opinion with the measurement of the boat in mind? A. Yes, sir.

Q. Am I correct in assuming when this boat gets on a little uneven keel, that changes the water line on her chime or side, which is slightly flanging at that point? A. You are right. 4574

Cross-examination by Mr. Englar:

Q. Mr. Brazell, you said that with some certain number of passengers on this boat she would be about one inch down by the head, didn't you? A. No, sir.

Q. Then I misunderstood you. A. I gave you the moment of trim one inch. I figured it 2.10 mean draft loaded with 86 passengers.

Q. What trim would you have her in on your testimony, with that load? A. I made my calculations based upon Mr. Barrett's load water line. I assume his calculations in that respect were correct. 4575

Q. What I am getting at is when you put these men on that you speak of, what is her draft fore and aft? Is she down by the head or down by the stern when you fill her up as you have with these men? A. Mr. Englar, it is impossible with the data I had on hand to determine the trim of the vessel. I assumed the trim given by Mr. Barrett,

4576 which was a trim I believe of 6 inches by the stern, is that right,—it was down by the stern anyway.

Q. What was this one inch you testified about? I am not sure I know what it was. A. I testified that a vessel floating at a mean draft of 2 feet 10 inches loaded with 86 passengers weighing 160 pounds apiece, that in order to trim the vessel one inch it would be necessary that a moment of 2.23 feet tons be applied to the vessel.

Q. Now, did you mean to testify with 86 people on board this boat would be dangerously tender?

4577

The Court: With how many?

Mr. Englar: 86.

A. I would say yes.

Q. You would think if she went out across the Hudson River there would be danger of her capsizing? A. Yes.

Q. With that many people on board? A. Yes, sir.

Q. And what do you think would cause her to capsize? A. There are two things that would tend to cause her to founder. One would be wind,

4578 one would be the loss of buoyancy through bilging the hull, through damage to the hull, or damage to the piping.

Q. Suppose we have not any water in the boat except the normal bilge water in the bottom, and suppose we have not any high wind, what would you say then as to the likelihood of capsizing? A. I would say in that case it would be limited to a consideration of the water in the hold.

Q. We have just excluded that.

The Court: He excluded that.

A. You have not a factor of safety there in this reserve buoyancy. Water would come through your stuffing box. 4579

Q. Your point is, loaded in that way, the boat would be dangerously tender if water got into her, that is what it amounts to, isn't it? A. I would say tender, Mr. Englar, refers to the intensity of stability. I would say she was tender at that low draft under the conditions without water in the bilges.

Q. Let us start all over again. If the vessel is dry and there is no wind and she starts out across the Hudson River with 86 men in her, do you say there is danger of her capsizing? A. Yes, hazards of the sea. 4580

Q. What? A. There are hazards in the sea.

Q. What hazards have you in mind? What makes you think she might capsize? A. I would refer to a slight accident we will say around the stuffing box, which would let water into the vessel, you have not provided——

Q. Just a minute.

Mr. Axtell: Let him finish.

Mr. Englar: All right.

4581

A. You have not provided under those conditions sufficient factors of safety for that vessel.

Q. Let us start all over again, Mr. Brazell; let us not have any water in the boat. We can assume that, you know what a hypothetical question is. A. Assume there is no possible manner of getting water?

Q. Do not assume that, but assume that no water gets in the boat other than the ordinary bilge water, which I suppose is there, other than

4582 that, there is no water in the boat, and no wind, and the boat starts out with 86 people aboard, and I ask you whether you consider she would be in danger of capsizing if no water gets into her? A. If no water gets into her—what did you say about the wind?

Q. I said no wind. A. Then I would say there would be no danger of the vessel capsizing or foundering, that is a better word.

Q. So your objection to the vessel's stability is based on emergencies or accidents that might happen, is that so? A. Yes, sir.

4583 Q. Have you made a study of motorboats from the standpoint of metacentric height? A. I have.

Q. How many of the motorboats that run in this harbor have you examined to determine their metacentric height? A. I have not made an investigation on a single one in this harbor.

Q. So you cannot tell us how the metacentric height of this boat compares with any other launch in the harbor, can you? A. No, I cannot.

Q. You spoke some time ago of having designed boats. Will you tell us what boats you designed? A. Yes, sir; starting from the present time and reversing the years, I designed a short time ago

4584 a fleet of stock models for the Eastern Gaffka Company, located at Greenport, Long Island.

Q. When did you do that? A. I finished that probably about three months ago.

Q. Let us go back to December, 1926. I will ask you what boats of different types you designed prior to that date? A. I had designed three vessels for myself.

Q. Just a moment. Were those built? A. Yes, sir.

Q. Who built them? A. I built them myself.

Q. What sort of vessels? A. One was a V-bot- 4585
tom speed boat, two were cruisers. The largest cruiser I built for myself was 38 feet long.

Q. And that was prior to December, 1926? A. Yes, sir, that was considerably prior.

Q. What other vessels had you designed prior to that date? A. I suppose you are referring to small craft?

Q. Any kind of vessels. A. I assisted in the design of a ferryboat, consulted probably would be a better statement of fact, consulted in the design of a ferryboat.

Q. Whom did you consult with? A. I was con- 4586
sulted by the builders of the vessel.

Q. Was she built? A. Yes, sir.

Q. Is she in service now? A. To my knowledge I believe she is.

Q. Where? A. This ferry was built for service between Tacoma, Washington, and a little point called Gig Harbor.

Q. Was there any other marine architect that took any part in that case except yourself? A. Which one are you referring to?

Q. The ferryboat. A. No, I was the only one called in on that, to my knowledge.

Q. Did you draw up the plans? A. I laid out 4587
the lines for her, yes, sir.

Q. Did you decide on the design of the boat? A. No. I approved primarily the design.

Q. Now we have the three motorboats and the ferryboat. What other ships did you design? A. I just completed——

Q. No, before December, 1926? A. I cannot say I had complete charge of the design of any boats other than I mentioned.

Q. You did not have complete charge of the

4588 design of this ferryboat? A. As far as the technical side was concerned, I did.

Q. Isn't it a fact what you did really was just to prepare plans to set forth what these people wanted, the sort of boat they wanted? A. Yes, sir.

Q. They came in and said they wanted to build a boat of a certain type and wanted you to prepare plans? A. That was not exactly how it happened. The people went to the shipyard and wanted a boat of such and such a size, and the owner of the boat yard came to me to get up the
4589 form and give information relative to the propulsion of the ferryboat, which I did.

Q. As a matter of fact, Mr. Brasell, aren't you one of the two young experts who were referred to by the Court as having testified in the Cotopaxi case tried about a week ago? A. I do not know what you mean.

Q. Didn't you testify in that case? A. Yes, sir.

Q. For Mr. Axtell: Yes, sir.

Q. Was there any other naval architect he called in that case besides you? A. Not that I know of.

Q. Didn't Mr. Block testify in that case too,
4590 the "Cotopaxi" case? A. I never thought that Mr. Block claimed to be a naval architect.

Q. Did he testify in that case? A. Yes, he testified in that case.

Q. As a matter of fact, since you graduated from your course in naval architecture and up until say the end of 1926, you were not working as a naval architect most of the time, were you? A. I was given employment primarily due to the fact I was a naval architect.

Q. What you really did was, you worked as a

mechanic a good part of the time? A. Not a great part of the time. My mechanical experience is a very minor part of my experience at that time. 4591

Q. How long did you work as a ship fitter and mechanic? A. I would say my total experience as a ship fitter and mechanic was two years after I left school, not to exceed that; less than that, possibly.

Q. And when did you leave school? A. 1917.

Q. You did a good deal of engineering and appraisal work, didn't you, for a period of years? A. Yes, sir.

Q. And that lasted how long? A. That lasted, I would say, about five years. 4592

Q. When did you design this ferryboat? When did you look over the plans of the ferryboat, what year was that? A. That was about 1919, if I recall; it possibly might be 1920, but I think 1919.

Q. When was it you designed these launches? A. 1917 was one, and I had one launch every year succeeding.

Q. Have you ever gone to sea yourself, had any sea experience? A. I have been to sea, yes, sir.

Q. In what capacity? A. In the capacity of an inspector for trial trips, primarily, outside of being a passenger aboard. 4593

Q. Have you ever gone to sea or on the Lakes as an officer or member of the crew of a ship? A. No, sir.

Q. You do not hold any license? A. No, sir.

Q. Have you ever had supervision over the operation of any vessels that were carrying passengers? A. No.

Q. Now, what would you think from what you

4594 know about this boat, and what you have heard about her here, would be her light water line, about where would you suppose her light water line would be? A. That is going to be entirely an estimate on my part, Mr. Englar.

Q. You say you have designed motorboats and you have seen lots of pictures of this boat, and you have a general idea of her. I do not expect you to give it within a fraction of an inch, but you must know within an inch or so how the boat would ride light? A. I would expect this vessel to ride light with that cabin and everything on board there, which I would consider
4595 would be of considerable weight; she should have a draft from the keel of about 2½ feet.

Q. That is mean? A. Mean draft, yes, sir.

Q. Mr. Barrett, as you know, figured the draft light about 2 feet 3 inches? A. No, I did not know that.

Q. At any rate, as an estimate, you think 2 feet 6 is somewhere near right? A. That is an offhand opinion, an estimate.

Q. Assuming that is her light draft, and assuming that you put nothing on her but men, have you figured how many men you would have to
4596 put on her to get her down to a point where she had say 8 inches freeboard amidships and 15 inches freeboard at the stem? A. No, sir, but I can do that.

Q. Offhand you know it would take a couple of hundred men, don't you? A. Yes, sir, it would.

Mr. Axtell: That is assuming she had no water in her?

Mr. Englar: Yes.

The Witness: Yes, that was the question.

Q. Now, there is no rule of marine architecture that doors have to open either inwardly or outwardly, is there? A. There is a custom. 4597

Q. I say, is there any rule on the subject that you ever saw laid down by any text book writer or any board of any kind? A. I never have noted any yet, no, sir.

Q. You cannot point to any text book or any set of rules gotten up by inspectors or anybody as to which way doors would open? A. No, sir.

Q. And as a matter of fact, don't you know a lot of the ferryboats here in New York Harbor have doors that slide, do not open either way, just slide open and shut? A. That is quite possible. I cannot testify to that. 4598

Q. You said something about the approaches to the exits. Did you mean there was not much deck space outside? A. No, I meant inside the cabin.

Q. You meant there was not room enough for the people to get to the exits? A. Loaded in that condition, yes, sir.

Q. Now, if you were sheathing a boat to protect her from ice, what sort of sheathing would you put on? A. I suppose you refer to the "Linseed King"?

Q. Any small boat. A. This type of boat? 4599

Q. Yes. A. I would put on a sheathing that would be about probably 10 gauge at least, that would be the minimum thickness.

Q. That is about how thick? A. Just a trifle thicker than 1/8 inch.

Q. What, 10 gauge? A. Yes, sir.

Q. Of what material? A. I would put on galvanized iron.

Q. Can you tell us anything about how many motorboats in this harbor there are that have 1/8

4600 inch galvanized sheathing all the way up their bows? A. No, sir, I cannot.

Q. You are telling what you would do in building a boat? A. To run through ice across the river under conditions which I assumed.

Q. You know lots of motorboats are sheathed with light copper sheathing? A. Yes, sir.

Q. Do you understand that is put there for protection against collision? A. No, that is not primarily put on for that.

Q. It is put on to protect the boat from wear and tear, isn't it? A. Yes, sir.

4601 Mr. Englar: I would like to confer with Mr. Barrett, and then I can examine the witness on some scientific subjects better, if we could adjourn now.

The Court: Very well.

Mr. Axtell: Fred Lang, the other operator, is sick, and was operated on I believe for hernia. If this case lasted until Monday he could come here personally, but I think your Honor wants to finish the case up this week.

The Court: Yes.

4602 Mr. Axtell: Would it be agreeable to take his testimony Saturday morning as part of our case, and the deposition can be added to our record? I can take my car, and we can take the stenographer and go over there, either Mr. Englar or Mr. Matteson.

Mr. Englar: I would not want to go on with our rebuttal until that man is examined.

Mr. Axtell: Would you be willing to do it tonight, take somebody over this evening

at six o'clock, take my car and the stenog- 4603
rapher, and somebody from your office, Mr. Matteson, perhaps?

Mr. Englar: We are going to start our case, and to go over there would be troublesome.

The Court: How much time do you require to rebut?

Mr. Englar: I would think not over a day and a half, probably less.

Mr. Axtell: The case won't be finished anyway this week unless your Honor sits Saturday.

Mr. Englar: What I suggest is if Mr. 4604
Axtell can finish his case tomorrow, and if your Honor would then give us part of the afternoon to examine the man, we would be in a position to put in our case Monday morning, and probably finish Monday.

The Court: Try to arrange it. You expect to finish between now and tomorrow?

Mr. Axtell: The only thing now is Lang's testimony and the records. We have a witness here to prove four more 4605
bodies, and we have widows, unless we can agree on the payroll.

The Court: That will finish today. Can't you go on tomorrow?

Mr. Englar: Yes, but there is nobody I want to put on until Mr. Lang has testified. He is one of the operators, and they examined two or three, and here is another one coming along.

Mr. Axtell: We will take the testimony of Lang tomorrow afternoon.

4606 Mr. Englar: What I would want to do is when Mr. Axtell finishes——

The Court: You want to recess and resume on Monday?

Mr. Englar: Yes.

The Court: Very well.

Recess till 2 P. M.

Met pursuant to adjournment at 2 P. M.; present as before.

4607 NICHOLAS J. BRAZELL, resumed the stand.

Cross examination by Mr. Englar (continued):

Q. Mr. Brazell, which is the more stable, a V-bottom boat like the "Linseed King", or a round bottom boat? A. That question, Mr. Englar, is ambiguous as far as principles of stability are concerned.

Q. In other words, you cannot answer it categorically one way or the other, is that it? A. No, it depends upon other conditions, other than the type of hull, although from the standpoint of dynamical stability the ordinary formed vessel,

4608 the hull of the vessel gives a better vessel as far as stability is concerned.

Q. What do you mean by the ordinary form? A. I mean the flat bottom vessel with perpendicular sides and with bilge ridges.

Q. In other words, you would say that other conditions being equal a round bottom boat would be more stable than a V-bottom boat? A. Considering motion of the vessel.

Q. Motion in what direction, forward? A. Oscillating, or subject to an outside force.

Q. Would you say that a given weight on the side of a round bottom boat would heel her over less than the same weight on the side of a V-bottom boat; is that what I am to understand? A. No, that is not what you are to understand. 4609

Q. Is that correct? A. No, that does not necessarily follow.

Q. Then can you explain to us in a few words just what you mean by the statement that the round bottom boat is more stable? A. I am assuming that the water line of the V-bottom boat is above the chime, in which case your normal formed vessel is more stable under operating conditions than your V type boat. 4610

Q. Suppose the water line is below the chime, what then? A. Then in that case the V-bottom boat is a better vessel, as far as stability is concerned.

Q. In which type of boat is the center of buoyancy higher, Mr. Brazell? A. The center of buoyancy in the V-bottom boat is higher from the keel, I assume that is the point of reference?

Q. Yes. A. Yes.

Q. And ordinarily the higher the center of buoyancy is the more stable the boat, is not that so? A. That is true.

Q. What would you say is the usual metacentric height for small harbor craft? Have you any experience by which you can tell us that? A. I can only give you my own recommendation as to that. 4611

Q. You cannot tell us by observation what the practice is? A. Except on the boats that I have had and am familiar with.

Q. I understand there were only three of those that you have built yourself? A. Yes, sir.

Q. At what angle of heel do you estimate the

4612 "Linseed King" would have the maximum riding moment with 81 men on board? A. That point would be the angle of heel at which the deck line coincided with the water plane.

Q. And at what angle would she be when that occurred? A. Assuming a 2 foot 10 draft?

Q. Yes. A. I think I made a calculation of that, and I think it was 24 degrees. I can run it off on a slide rule directly.

Q. Will it take you long? A. No, sir.

Q. Suppose you let us have it. A. According to my slide rule, that is an angle of 23 degrees and about 20 minutes.

4613 Q. About what? A. Between 23 and 24 degrees.

Q. She had a watertight deck for about a foot inboard, hadn't she? A. Yes.

Q. And would not her riding moment continue to increase as that went under? A. That could only be determined by calculation, but ordinarily speaking you would assume that it would decrease as that went under.

Q. That could be calculated? A. Yes, sir, that can be calculated definitely and accurately.

Q. I understood you to say that a vessel ought
4614 to be able to swing through an arc of 60 degrees; was that what you said, before her riding moment began to decrease? A. No, before there ceased to be a riding moment of any character, that begins to be negative then, I would say that is the minimum.

Q. Do you suggest that this vessel did not have any riding moment through an arc of 60 degrees? A. I would infer that, yes, sir, from a rough calculation that I made.

Q. But you have not calculated it? A. I have not made a definite study of that, no, sir.

Q. If this vessel had water in her up to the floor boards, and 81 men on board, in your opinion would she still remain upright? A. Now, there is a very definite distinction there, Mr. Englar, that must be made. If the water was enclosed entirely by the floor, that is one consideration; in that consideration, in that situation it would tend to make the vessel more stable. But if the water was 3 or 4 inches below those floor boards, then the reverse would no doubt be true. In other words, the question whether you have a free surface of that water, or whether it is fixed and cannot move—— 4615

Q. As a matter of fact, a free surface which is cut up by frames and other obstacles of that kind has very much less effect in reducing stability than a surface which is absolutely free, isn't that so? A. Thwartship swash plates or frames of that character would have no effect in reference to that. 4616

Q. But longitudinally? A. Longitudinally, yes, sir.

Q. Anything that tended to prevent the free flow of water back and forth across the vessel? A. Yes, sir.

Q. Coming back to the question I was on a moment ago, do you think that the amount of water which would be necessary to fill this vessel up to the floor boards would cause her to capsize with 81 men on board? A. I can render an opinion on that. 4617

Q. Have you tried to figure it out? A. No, sir, I have not made that calculation.

Q. Do you know whether this Convention for the Safety of Life at Sea is ordinarily followed in the construction of small harbor craft? A. I

4618 know that it is not except—well, I can only say, universally say it is not followed.

Q. What amount of reserve buoyancy do you consider is necessary for a vessel of the type of the "Linseed-King"? A. I would say that under minimum conditions she ought to have at least as much reserve buoyancy as the vesse' displaces in her draft, as a minimum consideration.

Q. In other words, if she had 100 per cent. of reserve buoyancy, you say that is sufficient? A. As far as buoyancy is concerned, yes, sir.

Q. You have not calculated just how much she had with 81 men on board? Have you calculated 4619 how much reserve buoyancy she had with 81 men on board? A. No, sir, I have not.

Q. Do you know how much reserve buoyancy collapsible lifeboats are required to have? A. Not offhand, no, sir. There is a regulation on that, though, Mr. Englar.

Q. Have you ever conducted any inclining experiments on vessels yourself? A. Yes, sir.

Q. What vessel? A. The "Great Northern", the "Northern Pacific", and then we had three or four, no, five German boats that we inclined. This was at the time of the war.

4620 Q. You say "we"; were you in charge of the operation? A. I had charge of the scientific work, yes, sir, of the calculations.

Q. In other words, you made the calculations? A. Yes, sir.

Q. Who was actually in charge of the inclining? A. I was out there supposedly in charge, but of course you understand that in a Navy Yard an officer is theoretically in charge.

Q. Was this in a Navy Yard? A. This was in a Navy Yard, yes, sir.

Q. And was being done by the Navy? A. Yes, sir. 4621

Q. You do not mean to suggest that the Navy turned the responsibility for that operation over to you, do you? A. I just mean to infer that, yes, sir. I made the calculations on that.

Q. Wasn't there some naval constructor, naval architect, who was a naval officer and who had charge of the operation over you? A. There was a man, my superior, a naval constructor, yes, sir.

Q. What was his name? A. Commander Bisset, now retired, I believe.

Q. Now what? A. I believe he is now retired. 4622

Mr. Englar: That is all.

Re-direct examination by Mr. Axtell:

Q. This vessel, when she was 35 feet long, or 37, whichever it was, no, 33 or 35, before they lengthened her 10 feet, she was in ordinary proportion for a launch, wasn't she, that is, the length and breadth was a fair ratio, 10 feet beam and 35 feet long? A. Yes; I would say those were ordinary dimensions.

Q. When you increased her length 10 feet, leaving her beam the same as it was, is that ratio of length and breadth normal for a vessel to be used in carting people around? A. Length is no consideration, Mr. Axtell, with reference to stability. 4623

Q. She could stand a wider beam, couldn't she?

Mr. Englar: I think that is a little bit leading; the witness has answered the question.

4624 Q. You do not mean to say that a boat with 18 feet beam is as easily tipped over as a boat with a 10 foot beam? A. No, sir; the ratio——

Q. We do not care much about what you call stability. What we want is a boat that won't tip over. Now, what is the difference in your figures between a 10 foot and say 13 or 14 foot beam? A. It will vary directly as the square of the beam divided by the draft, 10 by 14 feet.

Q. That is, a 45-foot boat, what would be the normal beam for such a boat if she were used for ferryboat purposes, taking in mind other
4625 ferryboats? A. Well, that is of course subject to scientific investigation.

Q. You said you designed a boat. A. I would start my calculation with a larger beam than 10 feet.

Q. What was the beam of the boat you did build, the ferryboat? A. That ferryboat was about 28 feet wide.

Q. What was her length? A. About 85 on the water line. I think it might have been a little longer, the boat had a large overhang fore and aft.

Q. She had a 28-foot beam? A. About that,
4626 yes, sir.

Q. Well, is it safe to say that a ratio of one to three of the length and beam is fair for the water line measurements— A. No, sir.

Q. For a ferryboat? A. No, sir.

Mr. Englar: Just a moment, your Honor. The witness, in answer to the first question, made a very clear and comprehensive statement. He says the length has nothing to do with it, as it obviously hasn't. I mean it does not matter how

long she is, it does not affect how stable she is, and it seems to me this subsequent series of questions is not only leading, but is scientifically unsound. 4627

Mr. Axtell: I am not pretending to be scientific.

The Court: No, overruled.

Q. Ordinarily are ferryboats wider than other boats? A. Yes.

Q. Is there a reason for that? A. Yes, there is a reason.

Q. What is the reason? A. Possibly the main reason is in a ferryboat you desire to get as much deck area as possible. 4628

Q. Does it increase her stability incidentally in case of panics? A. Yes, it increases her stability.

Q. People can all rush to one side of a ferryboat and still not tip her over? A. Yes, sir.

Q. Do you think the method adopted by this petitioner of stuffing the boat so full they could not move was a sufficient protection against unstability due to her narrowness of beam?

Mr. Englar: Oh, I object to that. 4629

The Court: I will sustain the objection.

Q. Have you figured out how many people a vessel of the tonnage, size and length of the "Linseed King" could reasonably be expected to carry with safety? A. Yes, sir.

Q. How many? A. I would say 50 people.

Q. That would be a maximum? A. I would say no; I would say that would be a good average.

Q. For safety? A. Yes.

Q. A maximum for safety?

4630 Mr. Englar: Just a moment. The man just said it would not be a maximum, but a good average.

(The last five questions and answers were repeated by the stenographer.)

Mr. Axtell: What is your answer?

Mr. Englar: I object to that.

The Court: Let him answer.

A. I will say that is about an average.

Q. Having in mind the sides of that boat, the exits and life preservers, and everything else, what is the maximum she could safely carry, in
4631 your opinion? A. I am going to raise that maximum; I would say 60 people as a maximum, in my opinion. I would say that would be in my opinion the ultimate limit, the maximum.

Q. How safe would that be? A. I would say in my opinion that that vessel would still be tender under those conditions.

Q. How about it if you put 86 men in there, you have got 26 more additional; have you figured out how much room they would have to stand or breathe? A. Yes, that is the point. It is not a matter of weight, it is a matter of the
4632 number crowded in. I would say that the limit, the number of passengers on this vessel——

Mr. Englar: Just a moment. This witness is not qualified at all to testify about crowding, your Honor. I object to his testimony on that point.

Q. Did you ever ride in the subway? A. Yes, sir.

Q. Did you ever ride in the elevators in this building? A. Yes, sir.

The Court: Do you waive your objec- 4633
tion?

Mr. Englar: No, sir, I press it.

The Court: Sustained.

Mr. Axtell: That is all.

Re-cross examination by Mr. Englar:

Q. You say that ferryboats are exceptionally wide? A. Yes, sir.

Q. And a great deal of that width is the overhang that comes out up at the deck, isn't that so? A. Yes, sir.

Q. And that tends to unstability, doesn't it, 4634
when you have your deck extend way out beyond your water line? A. No, sir, that gives you a margin of safety as far as stability is concerned.

Q. So you think the more your boat and your load project out beyond the water line, the more stable the boat would be? A. Qualifying that by a statement that the hull of the vessal also goes out there, and that when your vessel heels you pick up buoyancy at that extreme breadth, yes, sir, positively so.

Q. All right. In a great many ferryboats your hull doesn't go out as far as your deck, does it? 4635
A. No, sir.

Q. And to the extent that the deck extends out beyond your water line of the boat, beyond the outside plane of your boat, you lose stability, don't you? A. No, that has nothing to do with stability as far as increasing or decreasing it in the initial condition.

Q. It does not? A. No, sir, not in the initial condition; nothing to do with it.

Q. All right. Take a boat, let us say the hull of the boat is 30 feet wide, and she has a deck

4686 that covers that whole 30 feet and extends out 10 feet beyond the side of the boat on each side, and you have a load which extends out 10 feet on each side, you say that boat would be just as stable as if she had her entire load inside the lines of the hull, is that so? A. No, sir, I do not say that at all.

Q. Of course, she would not, would she? A. No, sir.

Q. And that overhang which at the start decreases your stability would not add anything to the stability until the overhang itself got down to the water, isn't that so, you would have to
4687 heel her over until this overhanging deck reached the water before she would begin to regain stability? A. Mr. Englar, I think we are having a confusion of terms with reference to stability and what I think you mean. Sea ability might be a word, or seaworthiness. Stability is a constant factor of a vessel, irrespective of the load. The load gives a moment to heel, we will say, but it affects the stability only with reference to its position on the center of gravity of the vessel, the form being the same.

Q. Do you agree to this, that carrying your
4688 load all inside the hull, and to a considerable extent even below the deck surface, is about as good a way to carry it from the point of stability as you could have? A. Yes, sir.

Q. And the more you spread it out outside of the water line of the boat, and the more you elevate it above the water line and spread it out in the sides of the boat beyond the water line, the more you are decreasing your stability, aren't you? A. No, you are not. You are not decreasing your stability by putting your load out at

that distance, but raising it up you are, but not by putting it out. As a matter of fact, you are increasing your dynamic, you are really increasing your stability if you bring your weights out, but what you are trying to say, you are creating a greater movement tending to overturn the vessel. 4639

Q. Yes. A. Maybe that is true.

Q. That is true, there is more of a tendency to careen or list the vessel? A. You are right.

Q. So when you speak about stability or lack of stability, that is not the same thing as the tendency to list one way or the other, you do not mean the same thing by those terms? A. No, by stability I mean the tendency of the vessel to return itself to an upright position in case of a heel from any cause or source whatever in still water. 4640

Q. If you have the deck of the vessel extending out beyond the water line— A. Yes, sir.

Q. And if your load is not in fixed stowage, but is movable, and if the load moves out on the edges of this deck, you have got a very unstable condition, haven't you, relatively, I mean? I am assuming now that your deck does not touch the water, I am not speaking of the deck that is in the water, but a deck up above the water and extending out beyond the water line. I say if you shift your load to one side or the other under those circumstances do you get a very unstable condition? A. No, sir. 4641

Q. You do not? A. No, sir.

Q. You certainly have a tendency towards capsizing? A. Yes; your moment to heel would be greater.

Q. Perhaps that covers the situation sufficiently. Going back to your first answer to Mr.

4642 Axtell, it is a fact, is it not, that there is no fixed relation between length and breadth as far as the design of ships is concerned? A. Except in the stages of design, primary stages of design, we know we should have a certain ratio of length to breadth in order to give her stability.

Q. But in figuring the stability of a boat in still water— A. Yes, sir.

Q. Quiet water, where you haven't to deal with big seas or anything, the length of the vessel really has nothing to do with her stability, has it? A. No, sir.

4643 Mr. Englar: That is all.

Re-direct examination by Mr. Axtell:

Q. Are you familiar with the New York Harbor? A. Yes, I am somewhat.

Q. Are those pictures of New York Harbor taken yesterday published in the daily paper today, one of them at the Battery, or do you not know it well enough around there?

Mr. Englar: Just a moment. I object to this examination.

4644 The Witness: I recognize this picture here, this one here, I think.

Mr. Englar: Are we going to try a half a dozen other cases here?

The Witness: I can recognize that picture there.

Q. Is that the Battery? A. Yes, sir.

Q. Isn't that the same place? A. I cannot identify that.

Mr. Axtell: I ask that that be marked 4645
for identification. I will put it in evidence if you want it?

Mr. Englar: No, I cannot stop you from marking it for identification.

Mr. Axtell: Do you want it in evidence?

Mr. Englar: No, I object to it.

Mr. Axtell: Mark it for identification.

(Marked Claimants' Exhibit WW for Identification of this date.)

Q. You figure on wind pressure on the part of your boat exposed above the water, do you not? 4646
A. Yes, sir.

Q. You take a narrow boat like this, with a 10 foot beam and 45 feet long, you have got proportionately more wind pressure which also affects the stability of the craft than you have in a shorter vessel with the same beam, haven't you? A. Yes, sir.

Q. If you increase her length without increasing her breadth you are affecting her stability, aren't you, her ability to stand up in the water is what I mean, not tip over? A. You do not affect your stability, but you affect the tipping moment due to wind pressure. 4647

Re-cross examination by Mr. Englar:

Q. I think that you are wrong about that if you just think it over a moment, Mr. Brazell. What difference does it make how long the boat is, you have got the same surface exposed to the wind, and you have the same amount of hull to sustain it; what difference does it make whether the boat is 5 feet long or 50 feet long? A. Be-

4648 cause on a vessel of constant proportions of breadth to width, when you are figuring your wind pressure your area of that longer vessel is greater than for your shorter vessel.

Q. Of course it is. A. And therefore, having a constant wind pressure, your heeling moment becomes greater because your area is greater.

Q. Let us just take an ordinary barge, Mr. Brazell, with a house on it. A. Yes, sir.

Q. And let us say it has a 25-foot beam and has a house of a certain height, whatever you choose to say, and you expose it to a certain wind, and that will heel it over a certain angle?

4649 A. Yes, sir.

Q. Any angle you choose to suppose, depending on the force of the wind? A. Yes, sir.

Q. If you had a barge just twice as long, with exactly the same house on it, exposed to the same wind, why would it heel over any further? A. It is a question of setting up. Here is the first thing; the first consideration you have got is a greater wind pressure.

Q. Just twice as much? A. All right, you have twice as much. Your displacement of your vessel we will assume is a constant per unit of

4650 length, and if the metracentric height, if your riding moment remains the same, which it would in this case, then under those conditions, Mr. Englar, with those corrections there, the values of your shipping moments and your riding moments will be the same in either case.

Q. I mean it would not matter whether she was 25 or 50 feet long, she would heel over just as much? A. Figuring a square-sided vessel, yes, sir, a box-shaped vessel.

Q. You mean that the under water part of her is box-shaped? A. Yes.

Q. I submit, Mr. Brazell, that that again does not affect it, provided she is the same shape all along the whole 25 or 50 feet. I mean, is not the proposition equally true of a round bottom vessel or a V-shaped vessel or a square-shaped vessel? A. No, that is not true; we have got to have a square-shaped vessel because when you come into a ship form you have got different conditions set up. As you increase the length of this vessel your other dimensions are increased proportionately, your sheer is greater, your vessel higher, your area exposed to the wind is going to be greater; therefore, the proposition only holds good on a box-shaped boat. 4651 4652

Q. You are assuming the conditions are not uniform from one end of the vessel to the other? A. I am assuming they are similar.

Q. But if the condition of the hull and the superstructure are uniform from end to end of this structure, what difference does it make how long she is? A. It makes no difference if they are constant, uniform.

Mr. Englar: That is all.

(Witness excused.)

4653

JULIUS JOHNSON, recalled, testified as follows:

Direct examination by Mr. Axtell:

Q. You were called the other day here as one of the survivors of this boat? A. Yes, sir.

Q. Do you know a man by the name of Eric Martin? A. Yes.

Q. Where did you last see him alive? A. On the boat at 95th Street.

4654 Q. On the "Linseed King"? A. Yes, sir.

Q. Have you ever seen him since? A. No, sir.

Q. Did he get on ahead of you or after you? A. He got on ahead of me.

Q. Do you know what part of the boat he was in? A. No, sir, I do not.

Q. You are sure he got on? A. He got on.

Q. Did you see him get off again? A. No.

Q. Do you know whether his body has ever been found? A. It has never been found.

Q. Do you know where his relatives are, any of them? A. He has got a brother in New York, I think.

4655 Q. A brother somewhere? A. Yes, sir.

Q. Do you know a man by the name of Fred Sumner? A. Yes, sir.

Q. Was he a colored man? A. Yes, sir.

Q. Where was he when you saw him last alive? A. He got on the boat just ahead of me, me and him got on about the same time.

Q. Have you ever seen him since? A. No, sir.

Q. Did he get out on the ice so that you saw him there? A. I didn't see him.

Q. Has his body ever been found, do you know? A. No, sir.

4656 Q. Do you know Adolphus Matthias? A. Yes, sir.

Q. When did you last see him alive? A. He got on ahead of me.

Q. He got on the boat ahead of you? A. Yes, sir.

Q. Was he working for the company before that? A. Yes, sir.

Q. Were these other two men you have mentioned working there before? A. Yes, sir.

Q. You are sure he was on the boat that morning? A. Yes, sir.

Q. You did not see him get off, did you? A. 4657
No, sir.

Q. Did you ever see him in the water? A. No, sir.

Q. Has the body been found, to your knowledge? A. No, sir.

Q. Has he any relatives? A. He has a wife on West 146th Street, 214.

Q. Nathaniel Wisdom, do you remember him? A. Yes, sir.

Q. Where did you last see him alive? A. He got on the boat ahead of me.

Q. On the boat? A. Yes, sir.

Q. Did you see him get on the "Linseed King"? 4658
A. Yes, sir.

Q. On Monday, December 20th? A. Yes, sir.

Q. Did you ever see him get off? A. No, sir.

Q. Did you ever see him in the water afterwards? A. No, sir.

Q. Or anywhere else? A. I saw him in February, I think.

Q. How long had he been working for the company before that? What do you mean by February? A. They found his body.

Q. They did find his body? A. Yes, sir.

Q. Where was it? A. 16th Street, West New 4659
York, Morgan & Morgan.

Q. Is that an undertaker's parlor? A. Yes, sir.

Q. So his body was taken into Jersey, not New York? A. Yes, sir.

Q. Do you know that yourself? A. Yes, sir.

Q. Did you see his body? A. Yes, sir.

Q. Yourself? A. Yes, sir.

Q. Did you identify it? A. Yes, sir.

Q. These four men I have just mentioned, were they all employees of Spencer Kellogg & Sons? A. Yes, sir.

4660 Q. And you had known them for some time before as employees? A. Yes, sir.

Mr. Axtell: Can you verify their employment?

Mr. Englar: Not right now.

Q. How about Benjamin Samuel, did you know him, John Benjamin Samuels, did you know him? A. I do not know him by name; there were a lot of men that I do not know by name.

Q. Did you know any others at all? Can you remember? A. I know a boy by the name of
4661 David Clark.

Mr. Axtell: That is all.

Cross examination by Mr. Englar:

Q. You testified for the District Attorney in this case, didn't you, Mr. Johnson? A. Yes, sir.

Q. Did you testify as follows:

"Q. Did you know any of the men who worked over there that used to get that boat every morning? A. Pretty nearly all of them.

"Q. Do you know anybody that was on that
4662 boat that we have not accounted for yet? A. I think all the colored fellows I know were accounted for; two have been missing, but they have not found them yet.

"Q. What are their names? A. I do not know exactly; one lived on 146th Street; he has a wife and two children.

"Q. Do you know the number? A. I do not know the number. He is a West Indian.

"Q. Negro? A. Surely, Matthias, he has not

been found, and a boy living in Brooklyn, Fred Summers lives on Gates Avenue." 4663

Did you testify that way as I have read before the District Attorney? A. I do not know whether I did or not; I do not think so.

Q. You do not think so? A. I gave a statement there were a lot of men over there I knew their faces and did not know their names.

Q. When you were examined the other day you were asked again about men that you knew on the boat, weren't you? A. Yes.

Q. And you did not remember all these men then, did you? A. Remember the names of all of them then? 4664

Q. The other day you testified, you were given a list of names and asked to check off those you knew? A. Sure.

Q. You checked off those you knew, didn't you? A. There were a lot of them that were not on that list the other day.

Q. You did not have this list complete at that time?

Mr. Axtell: We have put additional names on the list since then.

4665

Q. When you testified a few days ago did not you give the names of everybody you remembered that was on the boat? A. I give the names on the list, but I have got a different list today.

Q. Then when you testified——

Mr. Axtell: I will say for your information this is a list we got after the Missing Persons Bureau list was produced here.

4666 Q. When you testified a few days ago, Mr. Johnson, you didn't give all the men you remembered that were on the boat? A. I give the men I knew on that list.

Q. And nobody else. Now, I will read you from the testimony. You mentioned apparently five men when you were examined here a few days ago, and your present statement is that you did not at that time give the names of all the men you knew on the boat that morning? A. I give the names on the list that I knew.

Q. All the names on the list? A. That I knew, yes, sir.

4667 Q. Do you think you remember more distinctly now who was on the boat than you did when you testified before the District Attorney? A. I do not know; I give all I know by names.

Q. When did you first find out you knew what these men's names were? A. I knew the names all the time, but they weren't on the list.

Q. But the District Attorney did not show you any list? A. No, he didn't show me any list.

Q. You mentioned a man when you testified before by the name of Leobold; was he also known as Matthew Smith? A. Matthew Smith?

4668 Q. You mentioned a man named Leobold. A. When?

Q. When you were examined before here in the court. A. Leobold.

Q. Leobold. A. What do you say about Matthew Smith? I do not know whether he was the same man or not.

Q. Did you know a man Leobold? A. They called him Leobold; I do not know whether he was Matthew Smith or not.

Q. Did you know any man they called Matthew Smith? A. No.

Q. These men you have mentioned today, you have mentioned some men that you say you knew and I want you to give us a little description of each one of them. You say you knew a man named Eric Martin. A. Sure. 4669

Q. Was he a colored man? A. Yes.

Q. How old? A. About 22 years old.

Q. About 22? A. Yes.

Q. What size? A. He weighed about 120 pounds.

Q. A tall chap? A. Yes.

Q. About how tall was he? A. About 5 foot something.

Q. Do you know anything of his family? A. I know his brother, that is all. 4670

Q. Does his brother live here in New York? A. Sure.

Q. This man Sumner, what do you know about him? A. Fred Sumner, he is about 28 years old.

Q. 28 years old? A. Weighed about 150 pounds.

Q. About what height? A. About 5 foot 6, I guess.

Q. Do you know any of his people? A. He had a wife in Brooklyn, Gates Avenue, I forget the number.

Q. Have you ever been to his house? A. No, sir. 4671

Q. Did you ever see his wife? A. No, sir.

Q. Adolphus Matthias, is he another colored fellow? A. Yes, sir.

Q. How old was he? A. He is about 32 years old.

Q. What did he weigh? A. About 135.

Q. 135? A. Yes, sir.

Q. How tall? A. About the same height as Sumner.

4672 Q. About the same as Sumner? A. Yes, sir.

Q. Do you know any of his people? A. He was living at 214 West 146th Street.

Q. Had you ever been there to his house? A. Yes, sir.

Q. Do you know any of his family? A. I knew his wife, that is all, I guess.

Q. Nathaniel Wisdom? A. Yes, sir.

Q. How old a fellow was he? A. 31.

Q. A colored fellow? A. Yes, sir.

Q. What do you think he weighed? A. He weighed about 160 pounds.

4673 Q. How tall? A. He was about 5 foot 7 or 8 inches, something like that.

Q. Where did he live? A. He lived at that time, his wife lived at No. 2 West 129th Street, the fifth floor.

Q. Had you ever been at his house? A. Yes, sir.

Q. Did you know his family? A. Yes, sir.

Q. Who did he live there with? A. He lived with a man named Matthews.

Q. Did he have any family? A. He had a wife.

Q. And they both lived there? A. Yes, sir.

4674 Q. David Clark, was he another colored fellow? A. Yes, sir.

Q. How old? A. Dave was about 27 years old.

Q. What did he weigh, do you think? A. About 150 pounds.

Q. And how tall? A. He was near 6 feet.

Q. Where did he live? A. He lived somewhere on St. Nicholas Avenue, somewhere in the 400 block.

Q. Have you ever been to his home? A. No, sir.

Q. Do you know his family? A. He didn't have 4675
no family, he was a single man.

Q. I did not conclude the cross examination of this witness the other day. I want to ask him another question or two about the accident. Did you hear the captain say something to the effect that he would not make another trip? A. No, sir, I did not.

Q. You did not hear that? A. No, sir.

Q. Did you hear him say anything to the effect that he would make another trip? A. I didn't hear him say.

Q. You didn't hear him say either one? A. 4676
No.

Q. Did not you testify for the District Attorney as follows: "Q. Tell me what else happened after you pulled away from the dock. A. As we pulled away from the dock he said that was the last trip." Didn't you testify to that effect? A. I do not think so.

Q. I will read you the following testimony from what purports to be a copy of your testimony before the District Attorney, and ask you whether it is correct, page 6; following immediately the testimony that I last read: "Q. Whom did he say that to? A. I do not know, some of the men who 4677
were in the pilothouse near him with the captain. Q. He had them even up there? A. Yes. Q. You saw that with your own eyes? A. Yes. Q. About how many men? A. Four or five. Q. Then what happened after that? A. As we got to the middle of the river the boat struck a cake, I felt like a hole was knocked in us, and the propeller kept turning." Did you give that description of the accident to the District Attorney? A. I told him the boat struck the ice, I remember that.

4678 Q. Is what I just read a correct statement of what you said to the District Attorney? A. No.

Q. It is not? A. No.

Q. How many men were up with the captain? A. About four or five up there.

Mr. Englar: That is all.

Re-direct examination by Mr. Axtell:

Q. Is that what you meant, there were four or five in the pilothouse? A. Yes.

4679 Q. How long after you got out of the water was it you were examined by the District Attorney's office? A. About a week; I do not know, about a week, or three or four days anyway.

Q. Don't you remember it was the morning of the disaster, or during that day? A. Which?

Q. You were examined the same day you were pulled out of the river? A. I was examined that night in the hospital by the District Attorney, but I made a statement since then.

Mr. Englar: This statement is dated December 28th.

4680 Mr. Axtell: You heard the District Attorney detective say when he did the examining, didn't you?

Mr. Englar: No, I didn't.

The Court: He said he gave a statement afterwards; perhaps that is the one. Did you make two statements?

The Witness: I did not give no statement up at the hospital. I was asked how the accident happened, but it was on the 28th when I made my statement.

By Mr. Axtell: 4681

Q. You were never sworn as a witness in any proceeding, were you? This is the first time you ever gave your testimony? A. Yes, sir.

Q. You did not sign this statement? A. Which statement?

Q. The statement at the D. A.'s office? A. The District Attorney?

Q. Did you sign it, do you remember? A. I do not remember whether I signed it or not.

Q. You do not remember signing any statement? A. No, sir.

Q. I show you this picture and ask you if you 4682
know that man? A. Yes, I know him.

Q. Who is he? A. He is a boy we called Indian.

Q. What was he commonly known as over there? A. We always called him Indian; I never knowed his name. He went by the name Indian.

Q. Did you see him on the boat that morning? A. Sure.

Q. Do you know whether his name was C. Victor? A. I do not know his name.

Q. Did you ever hear him called Benjamin Samuels, Carl Thigpen? A. I did not know his 4683
name at all.

Q. Did you ever hear him called Thigpen or anything like that? A. We called him Indian and Fats.

Q. How long did he work for the company? A. He worked for the company three or four months.

Q. You have never been questioned about this man at any time, except right now? A. No, sir.

Q. This is the first time anybody showed you that picture? A. Sure.

4684 Q. There is no question but that that man was on the boat? A. Yes, sir, he was on the boat.

Q. Did you ever see his body since then, or hear of it being found, or anything? A. No, sir.

Mr. Axtell: That is all. I call for the pay check for this man, Thigpen or C. Victor.

Re-cross examination by Mr. Englar:

Q. Do you have a distinct and separate recollection as to each one of these men you said was
4685 on the boat that morning? A. Which?

Q. I said, have you a distinct recollection about each one of these men you said was on the boat? A. What I said here today?

Q. Yes. A. Sure.

Q. As a matter of fact, what you really remember is that they used to take that boat every morning, isn't that it? A. Take that boat every morning, yes, sir.

Q. And you have no definite recollection as to each one of these men, as to whether you saw them that morning? A. I saw them, and talked
4686 to them.

Q. You saw and talked to each one you have identified here? A. Yes, sir.

The Court: Well, that is all, I think.

Mr. Axtell: May I have this photograph I just hold in my hand and showed this last witness marked for identification?

(The same was marked Claimants' Exhibit XX for Identification of this date.)

(Witness excused.)

MARIAN B. THIGPEN, called as a witness on behalf of the claimants, being duly sworn, testified as follows: 4687

Direct examination by Mr. Axtell:

Q. Where do you live? A. 208 Littleton Avenue, Newark, New Jersey.

Q. Do you know this man on this picture marked Exhibit XX for Identification? A. Yes, sir.

Q. Who is it? A. My brother, Carlos Thigpen.

Q. Did he work for Spencer Kellogg & Sons? A. Yes, sir.

Q. When did you last see him alive? A. Thursday before the boat sunk. 4688

Q. Was he working for them on the day she sunk? A. Yes, sir.

Q. Has his body ever been found since? A. No, sir.

Mr. Axtell: I offer the photograph in evidence.

(The photograph previously marked Exhibit XX for Identification was received in evidence and marked Claimants' Exhibit XX of this date.)

4689

Q. I show your a check signed by Spencer Kellogg & Sons to the order of Marian Thigpen, administrator to the Estate of C. Victor; to what does that relate? A. Yes, sir.

Q. To what does that relate? A. I made the application a few days after he was drowned.

The Court: What was that check for?
The Witness: His salary.

4690 Q. For whom? A. For Carlos A. Victor. He worked under the name of C. Victor for Spencer Kellogg & Sons, and they called him Indian and Valentino. His badge was No. 591.

Q. And they gave you that check? A. Yes, sir.

Q. Is that the original check? A. Yes, sir.

Q. You never cashed it? A. No, sir.

Mr. Axtell: Will you concede now that this man was employed on that date, and you paid his wages by this check, and that he was dead, and that he was on that boat?

4691

The Court: It is scarcely necessary, in view of the check, is it?

Mr. Englar: I will concede everything except he was on the boat. I want to make some inquiry.

Mr. Axtell: Then I ask you to produce your own letter of December 29, 1926, of which this is a copy.

Mr. Englar: I am not going to stand up here and have demands made upon me for concessions about each individual man, because I do not carry them in my mind, I

4692 do not know.

Mr. Axtell: I ask you if that is a correct copy; this is another man. You made an affidavit he was dead, and died on the boat. I want to know if you concede it is true.

I ask that this check be marked in evidence.

(The same was received in evidence and marked Claimants' Exhibit YY of this date.)

Mr. Englar: Mr. Aldrich says he has no doubt he did write such a letter as that about Mr. Samuels. 4693

Mr. Axtell: Are you willing to concede Samuels was lost on that launch?

Mr. Englar: Not unless, if you will let us go over your list and go over the additional list, then I will concede what is right, but I will not be asked one man after another, this way.

(Witness excused.)

Mr. Englar: Now, I would just like to say, your Honor, we have some tabulations here which it has taken a day and a half of very active work to prepare, and we also have the payroll here, and I believe those are the things Mr. Axtell has been most anxious to get. I am perfectly willing at any time to take his list of men that he claims were on this boat and find out whether they were on our payroll or not, and if they were, we will concede it. I am not going to concede anybody was on the boat unless I have an opportunity to investigate. 4694

Mr. Axtell: We think that is an inadequate concession. We want the payroll and access to it. 4695

Mr. Englar: It is right here.

Mr. Axtell: You say you will compare it, and I want to compare it myself. I want to see how many men there were that were drowned on this boat that have not been heard of, and I think counsel should permit us to do so.

Mr. Englar: I have suspected all along

4696 that what Mr. Axtell wanted to do is to make a speech. We have the papers right here.

TERRENCE J. MULLEN, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. You are a lawyer? A. Yes, sir.

Q. Associated with— A. Morris Lavitt.

4697 Q. Attorney for Benjamin Samuels? A. Yes, sir.

Q. You and Mr. Lavitt are representing his estate? A. Mr. Lavitt is the attorney, and I am taking care of it for Mr. Lavitt.

Q. And the matter has been turned over to me in connection with these other cases? A. It has, yes, sir.

Q. What are the nearest relatives of Mr. Benjamin Samuels? A. He left a widow surviving.

Q. Where? A. She lives in Manhattan, and I could have her here tomorrow.

Q. Letters of administration have been issued?

4698 A. Yes, sir.

Q. And is this a true copy of a letter which was sent by Spencer Kellogg & Sons Company to the Metropolitan Life Insurance Company to enable her to collect some insurance? A. Yes, sir, because I compared it.

Q. Was the insurance paid? A. It was, yes, sir; I saw the check.

Mr. Axtell: Now, are you willing to concede this man was dead, and he died on the boat?

Mr. Englar: I certainly am not willing 4699
to concede he died on the boat.

The Court: Is it necessary to take testimony in relation to all these matters? It seems to me the only question here is whether the petitioner is entitled to liability, and that will depend upon his privity of knowledge.

Mr. Axtell: What we want to show is the number on the boat that morning. We say she was overloaded.

The Court: Well, that is pertinent, of course.

Mr. Axtell: That is one thing they can- 4700
not possibly dodge privity of knowledge of.

The Court: I thought most of this testimony with relation to the identity of the persons on this boat might be given before the Commissioner, if there is to be a Commissioner.

Mr. Axtell: Of course, your Honor could refer that matter to a Commissioner to determine how many were aboard.

If Mr. Englar would give me access to the payroll, possibly we could agree—— 4701

The Court: Both of you have been talking about it so many times I thought you would have agreed by this time.

Mr. Axtell: But they even disclaimed knowledge about the cards, and even the cards were in their possession.

The Court: As I understand, counsel is perfectly willing to show you his list of all the persons who received checks, and all the persons who were employed, but he

4702 is not willing to concede they all went under in that catastrophe.

Mr. Englar: I am not willing to concede every employee we had who is no longer working for us went down on that boat.

Mr. Axtell: If you paid his salary, if he died, and he was not there, are you willing to let that admission go in, that you paid him for services he did not render after this disaster?

Mr. Englar: We have certain data which we can supply, and we are perfectly willing to give you a list of the people we employed.

4703

The Court: Do it.

Mr. Englar: Very well.

Mr. Axtell: That is all, sir. I will ask that this copy of a letter be marked in evidence, unless you produce the original.

(The same was received in evidence and marked Claimants' Exhibit ZZ of this date.)

4704

Mr. Englar: Here is a list of employees for the week ending December 18, 1926, with addresses, and also with a tabulation of the shifts in which the men worked; this applies only to the New York employees, which have been picked out of the payroll. I will also give Mr. Axtell, I am sorry to say we have not a copy of that to leave with him, but we have our own copy produced from Buffalo of the payroll

too, which gives all the employees, no matter where they live, but this payroll does not show any addresses or give any of the information which I assume Mr. Axtell wants, except the names of the people themselves. 4705

Mr. Axtell: What date is that?

Mr. Englar: This is for the week ending December 18, 1926. We have the same list of names which we can leave with you, but it does not contain the extensions of the amount they received.

Mr. Axtell: Have you the list of cards of men engaged on Saturday with instructions to come back on Monday morning? 4706

Mr. Englar: We have a record——

Mr. Axtell: Of course, that is not a permanent list, but you have a list? There were a lot of new men there.

Mr. Englar: I think the only person who could give you any competent proof as to the men who were at the plant on Saturday and Sunday and were told to come back on Monday morning is the timekeeper, who is just recovering from pneumonia, and I do not believe he will be able to be here; but Mr. Aldrich says it is possible he may be able to come hereby Monday. We have the information. 4707

Mr. Axtell: Couldn't you give us the cards? You gave them a card, you gave them an identification check to come back Monday morning. If we could get a list of those who were given identification cards, invited to come back Monday morning, it would shorten the matter.

4708 The Court: That would not be any evidence that they did in fact come back; would it, that they gave them a card?

Mr. Axtell: No, but it would connect up with the filing of letters of administration.

Mr. Englar: I will say I am going to object strenuously to letters of administration being received as proof that the men died on this boat.

The Court: What is the name of the man that is sick?

Mr. Englar: Mr. Nelson.

4709 The Court: Inasmuch as he is likely to be here on Monday, I will permit you to interrogate him with relation to all these matters then.

Mr. Englar: There is no such list.

Mr. Axtell: How about these cards we got from the insurance company? Hasn't that got a list of those men, or those casual employees?

Mr. Englar: What is it you want to get from them?

Mr. Axtell: The casual employees who

4710 were engaged.

Mr. Englar: There was no such card issued as that for these people at all to come back.

Mr. Axtell: No such card?

Mr. Englar: No.

Mr. Axtell: Haven't you any record of it here?

Mr. Englar: I do not know just what form the record is in. The only man who could answer the question is Mr. Nelson.

Mr. Axtell: If you have no such list, 4711
that is all there is to it.

Mr. Englar: I do not say Mr. Nelson hasn't all of that data, but we have no list here.

The Court: We will leave that for further examination later on when Mr. Nelson appears.

JOSEPHINE MORALIS, called as a witness on behalf of the claimants, being duly sworn, testified as follows: 4712

Mr. Englar: Your Honor, before we go ahead with the witness I would like to have these two documents marked for identification. I will ask to have the payroll, consisting of twelve pages, marked as our next exhibit, whatever it is.

(The same was marked Petitioner's Exhibit 17 for identification of this date.)

Mr. Englar: I will ask to have the tabulation with respect to the New York employees, consisting of nine employees, marked for identification. 4713

(The same was marked Petitioner's Exhibit 18 for Identification of this date.)

Direct examination by Mr. Axtell:

Q. You are the widow of a man— A. Carlos Moralis.

Q. And where were you married? A. Here in New York.

4714 Q. And where did you live? A. 215 Audubon Avenue.

Q. Where did you live at the time he was working for Spencer Kellogg & Sons? A. 519 West 147th Street.

Q. Did he work for Spencer Kellogg & Sons? A. Yes, sir.

Q. When did you last see him alive? A. The same day, in the morning.

Q. What day? A. December 20th.

Q. December 20th? A. Yes, sir.

Q. Where did you see him that morning? A. I was in the same room with him.

4715 Q. At the house? A. Yes, at home.

Q. What time did he leave, what time did he go out? A. About half past six.

Q. In the morning? A. Yes.

Q. Pretty early, I do not suppose you know the exact time? A. It was about half past six.

Q. It was before daylight? A. Yes, sir.

Q. Have you ever seen him since? A. No, I haven't.

Q. Ever seen his body? A. No, I haven't.

Q. Have you looked around, inquired? A. Why, certainly.

4716 Q. Did you get a check after this for his wages from the company? A. Yes, sir.

Q. How much? A. $66.

Q. For two weeks? A. $66.

Q. That was for one week he had been there and one week he did not work, one week's salary that he earned and one week that he did not earn? A. Yes, sir.

Q. In other words, they gave you a week's extra wages? A. Yes, sir.

Q. Do you know what work he did over there?

A. I know he was a laborer; I do not know what he was doing. 4717

Q. Have you got a photograph of him with you? A. Not with me.

Q. You have some home? A. Yes.

Q. How long had he been on the payroll? A. Working for the company, about six months.

Q. Have you any children? A. Yes, I have two.

Q. Were you happy at home with him, with your husband? A. Why, certainly.

Q. You had no trouble of any kind? A. Nothing at all.

Q. Had he ever run away from home at any time before? A. No, no, he never did that. 4718

Q. And did he support you and take care of you and the children? A. Why, certainly; he was a perfect husband.

Mr. Axtell: That is all.

The Court: Any cross?

Mr. Englar: No, sir.

Mr. Axtell: Are you willing to concede this man was lost on the boat, and you paid his wages, and he is dead?

Mr. Englar: We are willing to concede that we paid him, as she said; I assume she was telling the truth. I am not willing to concede he was lost on the boat. 4719

Mr. Axtell: All right.

The Court: If she has a picture of him, some of these other men might identify it.

Mr. Axtell: Will you make certain whether the man was employed by your company? He is not on this list you gave us of employees residing in New York.

Mr. Englar: Are you sure of that?

Mr. Axtell: My associate says not.

4720 By Mr. Axtell:

Q. Did your husband have any other name? A. Yes, sir, he was known as Carlos Munoz.

Q. Did you ever live at 57 Keith Street, Brooklyn? A. No, sir.

Mr. Englar: It is on the sixth leaf of this. His name is there, Carlos Moralis.

Mr. Axtell: You are right, it is. I am inclined to think my supply of witnesses here today has about run out. We will have more of these later. We thought we
4721 would be able to get together and prove these men by stipulation, but apparently we will not.

The Court: Do you submit your side?

Mr. Axtell: Our side of the case is submitted with the exception of the testimony of Robert Lang and Height and the testimony of some more of these people about letters of administration, and so forth.

The Court: I will permit you to show that when they come. The claimants rest except that they desire to swear some of
4722 these additional alleged claimants.

Mr. Englar: No, your Honor, that is not the case. They want to examine additional claimants, which is not so important, but they are also going to examine an expert and one of the operators of the boat.

Mr. Axtell: Mr. Height will not be called as an expert by us. He will be called as to certain things he observed as to the markings on the hull.

Mr. Englar: Whatever it is, he is an expert, as I understand it.

The Court: When will he be here? 4723

Mr. Axtell: We can have him here tomorrow morning, unless he is recalcitrant. There is also the Standard Oil boat captain. Are you going to call him? We do not know where he is.

Mr. Englar: What Standard Oil boat captain do you mean?

Mr. Axtell: The tugboat captain who picked up some of the survivors.

Mr. Englar: Have we any such man we are intending to call? I do not think so.

Mr. Axtell: I do not suppose there is 4724
any great need of calling him. He is just one of the men that helped.

The Court: Do I understand you are unwilling to go ahead with your rebuttal testimony until all of the claimant's testimony is before the Court?

Mr. Englar: I would be perfectly willing to go ahead if there was nothing but this testimony of relatives and administrators. But there is going to be the testimony of Mr. Height and Mr. Lang, I do not know what it is going to be, and I do not see how I can go ahead until that testi- 4725
mony is in.

The Court: The only thing I can see to do is to adjourn now until tomorrow morning, then?

Mr. Englar: If Mr. Lang cannot be here tomorrow morning, I, or one of my associates, will go over with you to his house and take his deposition, but if he can be here, well and good. Your Honor will recall I mentioned a Mr. Nelson, who was a time-

4726 keeper at the plant, and who I said would be able to give us some information about these men that were told to come back. I think your Honor may have him confused with Mr. Lang, who is going to be called by the other side, and who is one of the operators of the boat. Of course, Mr. Nelson is part of my case.

Mr. Axtell: I might say, if you would perhaps consent to reading the testimony of Mr. Height on the question of the valuation of the boat, a certain part of it, into the record, I might refrain from calling him. I
4727 do not intend to make him an expert, but he made a certain statement about the lines that he saw on the boat, if that can be read into the record.

Mr. Englar: I am perfectly willing to read his testimony if you will tell me what it is that you want to read in.

Mr. Axtell: Yes.

(Statements made off the record.)

Mr. Englar: Your Honor, I think we can probably dispense with Mr. Height's presence. Mr. Axtell wants to use some
4728 testimony taken before, and after I have an opportunity to check up with my expert, who has gone, I will probably agree as to it.

Mr. Axtell: I would much rather have Mr. Height testify. The only thing, I was doing this to save time.

Mr. Englar: Just a moment, your Honor.

The Court: Where was this testimony taken?

Deposition of Robert Height.

Mr. Englar: Before the Commissioner to 4729
fix the value of the boat, your Honor.

(Further statements made off the record.)

The Court: What was his name?

Mr. Axtell: His name is Robert Height. I might explain, this witness is one of the gentlemen who saw the boat after the accident and testified before the Commissioner on the question of value.

Mr. Englar: All right, go ahead and read that part of it.

Mr. Axtell: (Reading).

4730

"Q. Did you see the break occur? A. I did not see it occur, no, sir.

"Q. You say you were there when she was taken out of water? A. Yes.

"Q. Was it a fresh break? A. Yes.

"Q. Was there any evidence of the vessel having been used for any length of time after the wood cracked at that point of the break? A. No, she could not have been used with these holes in her.

"Q. The wood might have cracked and the board might have stayed in there for some time with the 4731
crack in it? A. The wood was perfectly sound where these holes were.

"Q. You think it was a fresh break? A. Yes, sir.

"Q. With reference to the water line of this boat, where was that break that you mentioned in the port bow? A. The lower part of the opening was 12 inches above the painted water line on the boat.

"Q. Was that the water line at the place where the water would ordinarily come on a boat like

4732 that? A. No, I think her actual line of flotation was perhaps 3 inches deeper than that. However, I judged from the stains on the boat's side, the water stains, regardless of the painted line."

Then on page 81, after the witness had been shown a sketch that I think I made probably: "I object to that," Mr. Matteson said, "because that obviously has nothing whatever to do with the issue before the Commissioner.

"Mr. Axtell: It will show whether she had been painted recently or not."

4733 Mr. Axtell: That is certainly pretty far-fetched.

Mr. Englar: If your Honor please I do not think these altercations should go in.

Mr. Axtell: I shall not persist in that. I think I got the wrong page. Then on page 18, there was some altercation about whether the witness should be compelled to answer further questions about that stained line, and the witness said: "If your Honor please, I have been already retained in this case by—" Shall I read that or leave it

4734 out?

Mr. Englar: You had better leave it out, because that will involve contradiction.

Mr. Axtell: "By Burlingham, Veeder, Masten & Leary as an expert, and I certainly feel that whatever instructions they issue ought to be obeyed by me. I am perfectly helpless in this case, but I am already retained; I am here simply under subpoena on a question of fact." The Commissioner said, "Yes, and this is a simple question of fact."

"Mr. Axtell: There is only one ground on which you can object to that, that is if you cannot answer that question without stating an opinion, so I think you might answer. Otherwise you have got to answer. It does not call for an opinion to state where he saw something, and I submit the witness must answer the question." 4735

From now on to page 86, the Commissioner says: "I understood the witness to say there was a stain on the side of the vessel above the water line indicating about where the permanent actual water line was somewhat higher than the painted water line. 4736

"Q. Is that right, Mr. Height?

"Mr. Matteson: I object to any questions to Mr. Height along this line."

And the witness refused to testify any further.

Mr. Englar: I am perfectly willing, your Honor, to concede that those proceedings did take place, and that so far as the witness's testimony is concerned, I have no doubt he would testify the same if he came here tomorrow. But I do not concede the materiality of the conversation between counsel, from which Mr. Axtell apparently asks you to draw an inference. 4737

The Court: We will not pay any attention to them. The stenographer might strike them out, but I do not see the relevancy of the excerpts of testimony that were read.

Mr. Axtell: Just where the water line was, that is all it was, just that one point.

4738 The Court: He said the water line was about 3 inches above her painted water line. Is there anything further to be done at this time?

Mr. Axtell: Now there is Lang, and just these people to prove the rest of these missing persons.

Mr. Englar: I am perfectly willing to go ahead with our case, with the understanding that additional relatives may come in and testify, if need be, I mean within reasonable time.

4739 Mr. Axtell: I have a typewritten statement from Mr. Lang. It was given, I think, to my secretary. She went over to see him one night. I am perfectly willing that counsel should see that to know the scope of his evidence.

The Court: You may want to give some testimony additional to what you have just mentioned regarding the identity of persons aboard the boat?

Mr. Axtell: Yes.

Mr. Englar: Yes, sir; and as long as they are not eye witnesses of the disaster,

4740 had nothing to do with the boat——

Mr. Axtell: No, they are not.

Mr. Englar: I shall not make any point about the order of proof.

The Court: Then that will be reserved.

Mr. Englar: But I do want to get all of the witnesses, the people who operated this boat and the eye witnesses of the accident, examined before I produce testimony in rebuttal. I am perfectly willing to look over Mr. Axtell's statement if he wants me

to, and if we can agree to it, it may not be necessary to call him. 4741

Mr. Axtell: It is not a sworn statement, just an interview.

The Court: Then we cannot do anything until tomorrow morning when he comes in?

Mr. Englar: If he cannot come over here, I am willing to go over there with Mr. Axtell to take his deposition, but I think it would be much better to have him here.

The Court: Yes, sir. We will adjourn until 10:30 tomorrow morning.

4742

Adjourned to Friday, January 27, 1928, at 10:30 A. M.

New York, January 27, 1928.

Met pursuant to adjournment at 10:30 A.M.; present as before.

JULIUS MARTIN, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

4743

Direct examination by Mr. Axtell:

Q. Mr. Martin, did you have a relative on the "Linseed King"? A. Yes, sir.

Mr. Matteson: I do not think the question should be put in that form.

Q. Do you speak English perfectly? A. Yes, sir.

4744 Q. Was he your father? A. Yes.

Q. What was his name? A. My father was Fernando Martin.

Q. Did he work for Spencer Kellogg Sons? A. Yes, sir, two years.

Q. When did you last see him alive? A. The same date.

Q. What date? A. December 20th, Monday.

Q. Last year? A. Last year.

Q. Where did you live, or where did your father live at that time? A. 417 West 53rd Street.

Q. How big a man was your father? A. The
4745 same size as I am.

Q. That is 5 feet 5—how tall are you? A. 5 feet 6 or 7.

Q. How much did your father weigh? A. 170 pounds.

Q. Is your mother living? A. Yes, sir.

Q. Do you know whether she received any check for pay for your father? A. I do not know anything about that.

Q. Was your father's body found? A. After two months after the accident happened.

Q. Whereabouts? Where did you see it? A. I see it at the Morgue.

4746 Q. Which Morgue? A. Bellevue.

Q. At Bellevue Hospital? A. Yes.

Q. That is two months later? A. Yes, sir.

Q. And it had been in the river all that time, I suppose? A. Yes, sir.

Q. Did he have any papers from Spencer Kellogg? A. Yes, he has $200 in his pocket.

The Court: What papers from Spencer Kellogg?

The Witness: A paper he is working there.

Q. Did he have any tag? A. Yes, I have the 4747
tag myself.

Q. Did you get it off the body? A. He left it home that time.

By the Court:

Q. Where is the tag? A. I have it home.

By Mr. Axtell:

Q. Did you ever work for Spencer Kellogg Sons yourself? A. Yes, sir.

Q. Did you ever ride on the "Linseed King"? 4743
A. Yes, sir.

Q. How many times? A. Ten times.

Q. In what year? A. The same year.

Q. What month? A. I am not sure.

Q. Did you ride in that same month your father was lost? A. He used to ride so many times—

Q. What did you do over there? A. I was doing the same thing my father did.

Q. What kind of work was that? A. Press man.

Q. Did you ever ride over on the early boat when there was a seed ship in? A. Yes, sir. 4749

Q. How many people did they carry on those occasions—

Mr. Englar: I thought Mr. Axtell rested except for proof of the presence of certain men on this boat. If we are going into people who have ridden on the boat before, we will open it up again. I said I had no objection to his resting and proving people who were on the boat.

4750 Mr. Axtell: I did not know about this boy having ridden on the boat. I think I had better question him. We have not rested, I do not think. There has been a suggestion we would get through except for a few other witnesses.

Q. How many did you say rode on her when you were there? A. Always the same thing.

Q. Did you give your statement before the District Attorney? A. About 86 all the time.

Q. Did you say before the District Attorney about 80 or 90?

4751 Mr. Englar: I object. He put this witness on and now he is trying—

The Court: Sustained.

Mr. Axtell: You may examine.

Mr. Englar: I asked my associate, Mr. Matteson, to cross-examine on the identity, he has gone over the cards, but on the question of how many were on the boat, I would like to examine the witness myself.

Cross-examination by Mr. Englar:

4752 Q. When did you ride on the boat? A. I am not sure any more, but you can find out in the factory.

Q. About how long before this occasion on the 20th of December had it been since you had ridden on the boat? A. A week.

Q. You think you had ridden there the previous week? A. Yes, sir.

Q. And you worked as a press man? A. I had been working as press man.

Q. You did yourself? A. Yes. 4753

Q. Did you work continuously for a period of days, I mean one day right after another? A. I was working there one week. I cannot stand it, because the work was too hard.

Q. You worked continuously for one week? A. Yes, sir.

Q. Did you go over on the first boat every morning? A. Yes, every morning.

Q. Was there about the same number of men on the boat every morning? A. Sometimes 86, sometimes 87, something like that.

Q. You would say there were more than 80 men on the boat every day you went over? A. Yes, sir; they all sit down and stand up. 4754

Q. I am talking of the number you saw during the week you worked there. You went over on the first boat every morning? A. Yes, sir.

Q. And every morning you say there were 86 or 87 men on the boat? A. Yes, sir.

By the Court:

Q. Do you mean that, every morning practically the same number? A. Yes, sir; some of them come to get a job, and there would be more. 4755

By Mr. Englar:

Q. Was there about the same number of men on the boat every morning? A. No, sir.

By the Court:

Q. Not the same number? A. I did not count them.

4756 By Mr. Englar:

Q. We understand you did not count them, and you cannot give the exact number? A. No, nobody was staying there to count them every day.

Q. Was the number about the same every morning? A. It was about the same.

Q. This occasion when you say you last saw your father was on Monday? A. The same time he went to work at 6 o'clock in the morning.

Q. That was on a Monday? A. Yes, sir.

Q. Had you worked at the plant during the week before that? A. Yes, sir, before that.

4757 Q. You and your father had both worked there? A. Yes, sir.

Q. At the same kind of work? A. Yes, sir.

Q. That was the week before this Monday when you last saw him, is that right? A. I do not understand.

Q. You say you last saw him Monday? A. The same time the accident happened, the same day.

Q. It was the week just before that Monday that you worked there, is that right? A. No, I worked before.

4758 Q. Did you work at all at the plant during the week before this Monday when you last saw your father? A. Before I was working there.

By the Court:

Q. When did you begin to work there, and when did you end, if you know? A. I don't remember.

By Mr. Englar:

Q. What week was it, you say you worked

there a whole week? Was it the week just before your father went away for the last time? A. No. It was five weeks before that. 4759

Q. That would be in November? A. Yes, sir.

Q. Can you tell us which week in November it was? Was it about the middle of November or the early or the latter part of November? A. It was early in November.

Q. That was the last time you worked there? A. Yes, sir.

Q. Do you remember what your number was at the plant? A. I do not remember that.

Q. You had a number, a badge and a number? A. Yes, sir. 4760

Q. Did you work there under the name of Martin? A. Yes, sir.

Q. What first name? A. Julius.

Mr. Englar: I will ask my associate, Mr. Matteson, to clear up the question of identity.

By Mr. Matteson:

Q. Is your mother living in this country? A. No, sir. 4761

Q. Where does she live? A. Chile.

Q. At what place? A. At Valparaiso.

Q. What is her name? A. Teodolinda.

Q. Will you write your mother's name on this piece of paper and her address?

(The witness did so.)

Q. How did you recognize your father when he was found? A. He has a suit, and he was

4762 sick, and he had something here, a plaster. (Witness indicating on the chest), and by the teeth.

By the Court:

Q. What was the matter with his teeth? A. I know it was him.

Q. By the peculiarities of his teeth? A. Yes, sir.

Q. What were the peculiarities? A. They were all fine; they were all right.

By Mr. Matteson:

4763

Q. Did you find anything in his clothing, or anything to identify him by? A. Nothing at all.

Q. You did not? A. No.

Q. The only thing was there was a plaster on his chest? A. Yes, sir, and the clothes.

Q. Any name on his clothes? A. Yes, sir; there was marks.

Q. What kind of marks? A. Laundry marks.

The Court: I understood him to say on direct examination there was a tag.

4764 Mr. Matteson: That is what I was going to ask him.

Q. You say you had this tag? A. Yes, sir.

Q. Where did you get that? A. He forgot it home.

Q. What was the number on that tag? A. That I do not know. I have it home.

Q. What time did he leave home that morning? A. 6 o'clock; I live with him.

Q. Did you live with somebody? A. With my father.

Q. Did you board with somebody? A. No; my father has three friends there, the same fellows, they died on the boat too.

Q. Can you bring that tag down to us so we can see it? A. Yes, sir.

Q. Can you bring that down to us? A. Yes, sir.

Q. Will you do that Monday? A. Yes.

Re-direct examination by Mr. Axtell:

Q. Did you say three of your father's friends went down with him on the boat? A. Yes, sir, and one is alive. Four of them.

Q. Let us have the names. A. Juan Fernandes.

Q. Is he alive or dead? A. Dead.

Q. Did you see his body? A. Yes.

Q. Where? A. In the Morgue.

Q. Which Morgue? A. Bellevue.

Q. What time, when? A. The same day, six o'clock in the afternoon.

Q. The same day of the accident? A. Yes, sir, and Luis.

Q. Luis what? A. I do not remember the last name.

Q. Herrera, was it? A. Yes, sir, Luis Herrera.

Q. And who else? A. Juan Venegas.

Q. Is he alive? A. He is still missing.

Q. His body has not been found? A. No.

Q. Was he married? A. No. The other fellows was two married.

Q. Is there another one? A. Another one; the other one Henan, he is alive now.

Q. I never heard of him before? A. Henan.

Q. Can you write it? A. Yes.

4768 Q. Will you do so?

(The witness wrote the name.)

The Court: Ernandes, he wrote here.

Q. Do you know where he is? A. Yes, sir.

Q. Can you bring him here Monday morning? A. Yes, sir.

Q. How many have you given us now, three or four? A. Four.

Q. Is that all of them? A. Yes, sir, and I have another, Riquelme, he is alive.

4769 By Mr. Jayne:

Q. You say Ernandes, the name you have written here, is alive now? A. Yes, sir.

Q. Just before you spoke of him you spoke of another man who was dead, the last one before Ernandes. Will you write his name? Write the names of all of them.

(The witness did so.)

Q. Luis Herrera, is he alive or dead? A. Dead.

Q. Was his body found? A. The same date;

4770 he was inside the boat.

Q. Juan Fernandes, is he alive or dead? A. He is dead. He was found the same day.

Q. Herrera and Fernandes were found the same day? A. Yes, sir, the same afternoon of the accident; he was inside the boat.

Q. Now Ernandes you say is alive? A. Yes.

Q. Now the only other one besides these three is your father? A. Yes.

Q. And outside of those four you do not know of any more? A. I know Riquelme.

Re-cross examination by Mr. Matteson: 4771

Q. You are Spanish, are you not? A. No.

Q. Chilean? A. Yes, sir.

Q. You Chileans sometimes use different names, sometimes your mother's name and sometimes your father's? A. All the same.

Q. Did your father go by any other name than Martin? A. Fernando Martin Reyes.

Q. Did Fernandes have another name? A. I don't know.

Q. Did Herrera have another name? A. I don't know.

Q. And Venegas, did he have another name? 4772
A. I cannot tell.

Q. When was the last time you saw any of these other men except your father? A. Every one the same morning.

Q. Where did you see them? A. In the same house when they got up in the morning.

Q. Where did you see them, whereabouts in the house did you see them? A. In the house in the morning.

By the Court:

Q. Did you all live together? A. Yes, sir. 4773

By Mr. Matteson:

Q. And had breakfast together? A. Yes, sir.

Q. And that is the last time you saw them? A. Yes, sir.

Q. Did Ernandes have another name, do you know? A. I do not know. I know only the first name.

4774 Q. Is Ernestino his first name? A. Yes, sir.

Q. You do not know his last name? A. No.

Q. Venegas, is that his first name or last name? A. His first name is Juan.

Q. Did he have another name after Venegas? A. They always used two names.

Q. And you don't know what the other name was? A. No.

Q. That is so of all these fellows? A. Yes, sir.

Q. You made a statement to the District Attorney, didn't you? Do you remember making a statement to the District Attorney? A. No.

4775 Q. Don't you remember Mr. McGowan, the District Attorney, talking to you at the District Attorney's office right after the accident, the District Attorney's office up here on Lafayette Street, did you go there after the accident? A. Yes, sir.

Q. And the District Attorney talked to you, didn't he? A. Yes, sir.

Q. And did you make this statement to the District Attorney? He asked you: "Q. Do you know the names of anybody who were on the boat who are still missing? A. Yes, the same men who

4776 lived in my house, George Venegas, he is missing too. Q. Who else is missing that you know? A. Only my father and the other fellow." Is that what you told the District Attorney? Do you want to read it?

(Witness read the statement.)

A. He made a mistake there. I said the other fellows.

Q. You say you did not say that? A. No.

Mr. Matteson: Will counsel stipulate at this time, to save calling the District Attorney's stenographer, that I correctly read from the transcript? 4771

Mr. Axtell: I will stipulate the last sentence is, "Only my father and the other fellow". That is as it appears.

Mr. Matteson: And the question before that.

Mr. Axtell: Yes: "Q. Do you know the names of anybody who were on the boat who are still missing? A. Yes, the same men who lived in my house, George Venegas, he is missing too." 4773

Re-direct examination by Mr. Axtell:

Q. Was Venegas on the boat? A. Yes, sir.
Q. Did you testify about him? A. Yes, sir.

Re-cross examination by Mr. Matteson:

Q. You did not see the boat go out, you did not go out on the boat? A. No, I just leave them on the elevated to go there.

(Witness excused.) 4779

SARAH SOUTHWICK, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. Did you have any relative working for the Spencer Kellogg Company? A. A second cousin, William Graham.

4780 Q. When was the last time you saw him alive? A. December 18th, Saturday afternoon, at two o'clock, when he came to borrow enough money to buy overalls and a jumper to go to work Monday morning.

Q. Where did he live? A. I don't know; he boarded here and there and everywhere. If my husband was living, he would know, because he kept tabs on him.

Q. Where do you live? A. 380 85th Street, Brooklyn.

Q. Do you know whether he worked for Spencer Kellogg? A. No, that was his first morning
4781 to go over on that boat.

Q. Has his body been found? A. That I don't know.

Q. You have not seen him? A. No, I went to the Morgue two months after to see, but the description they had did not tally with him.

Q. Did you file a claim in this proceeding? A. Yes, sir, with you.

Q. Have letters of administration been issued? A. Yes.

Q. Have you ascertained from any source whether he was on that boat? A. No, sir; only
4782 a lady here, she——

Mr. Matteson: I object.

The Court: Sustained.

Q. You have a witness here? A. Yes, and she——

Mr. Matteson: I object.

The Court: Sustained.

Q. You have no knowledge yourself that he was on the boat? A. Only what he told me, that he was going to work Monday morning.

Q. Did he tell you where he was going to work? A. Yes, sir, Spencer Kellogg, and I wrote them a letter a month afterwards.

Q. Did you get a letter from them? A. Yes, sir.

Q. Have you it with you? A. No, you have it.

Mr. Axtell: I do not suppose you can produce that letter, Mr. Matteson.

Mr. Matteson: I don't know about it.

The Witness: It was received by them the 1st of February. There is a stamp on the back of the copy of the one I have.

4784

Q. You handed me an envelope last night? A. Yes, sir.

Q. Where was the letter? A. I gave that to one of your men at your office.

Q. A long time ago? A. Yes, July, I think.

Q. How old a man was Graham? A. I should judge 54.

Q. How big? A. 5 feet 2, gray hair and blue eyes.

Q. What would he weigh? A. I could not judge about his weight.

Q. Was he as heavy as I am? A. About; about as heavy as him. 4785

Q. I weigh 230 pounds. I do not think he weighed that much if he is only 5 feet 2? A. No, I do not think he weighed that.

(No cross examination.)

(Witness excused.)

4786 NELLIE WAGNER, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. Did you know this man Graham? A. I knew him by calling on Mrs. Southwick.

Q. She is a friend of yours? A. We live in the house together over five years.

Q. Did you see him some time in December before the "Linseed King" disaster? A. Saturday afternoon, that was the 18th of December, he called on this lady to borrow money to buy over-
4787 alls and a jumper, as he said——

Mr. Matteson: I object to what he said.

The Court: Sustained.

Mr. Axtell: It is the last statement of the man. It seems to me in a court of admiralty it would not have a harmful effect, and it might be connected up.

The Court: You expect to connect it?

Mr. Axtell: Yes, sir, with photographs.

The Court: Objection overruled then.

4788 Q. Tell briefly what he said. A. I was in this lady's house this Saturday afternoon, December 18th, and this man called there to borrow money to buy overalls and a jumper with, as he said he was going to work on this boat on Monday morning.

Q. What boat? A. Spencer Kellogg's.

Q. He said he was going to work on a boat? A. Yes, sir.

Q. Unloading a boat? A. I could not say what he said he was going to do. I did not pay much attention to what he saw saying, but he

said he was going to work on a boat for Spencer Kellogg.

Cross examination by Mr. Matteson:

Q. That was the only time you ever saw him? A. This man called at the lady's house. We live in the house together, he called a couple of times to see them.

Q. Did you ever know who he was before this Saturday afternoon? A. Yes, sir, previous to that, we lived in the house together and he called there ,and that is how I know he was a cousin to Mrs. Southwick. 4730

Q. Did he ever have any other name, do you know? A. Not that I know. I only know that one name.

(Witness excused.)

Mr. Axtell: Is Mr. Nelson coming over, the timekeeper, Mr. Englar?

Mr. Englar: I think Mr. Aldrich can cover everything you need Mr. Nelson for. I do not know.

4731

JAMES TROTTER, recalled.

By Mr. Axtell:

Q. You were on the stand here a couple of times before? A. Not a couple of times, just once.

Q. Do you remember whether there was a man by the name of Benjamin Samuels, John Benjamin Samuels, working for Spencer Kellogg? A. I knew him as B. Samuels.

4792 Q. Give us a little description of him, will you? A. That mogging we both left 125——

By the Court:

Q. A description of the man. A. A man about 5 feet 7, I should say, and I guess he weighed around 165 or 170 pounds.

By Mr. Axtell:

Q. A colored man or a white man? A. Colored man.

Q. Dark? A. Not very; he was between red and
4793 black; he looked a sort of dark light skin.

Q. Was he a married man or single? A. I knew him to be a married man.

Q. Do you know his family? A. Just his wife, that is all.

Q. Is she in New York? A. She is here.

Q. Do you know whether his body was found? A. Not that I know of.

Q. His widow is here in court, is she? A. Yes.

Q. Did you see him the morning of the accident? A. Yes, I did.

4794 Q. Did he go to work with you on the boat? A. Yes, he did.

Q. Did you see him after the boat went down in the water? A. I saw him in the water, yes, sir.

Q. You have not seen him alive since then? A. No.

Cross examination by Mr. Matteson:

Q. Do you know whether he had any other name? A. He was nicknamed captain.

Q. Did you ever hear any other name for him? 4795
A. No.

Q. What was his address, do you know? A. He lived in 149th Street. I could not say exactly the number of the house. I think something like 248, if I am not mistaken. His wife can certify that.

EDITH SAMUELS, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell: 4796

Q. You are the widow of a man named John Benjamin Samuels? A. I am.

Q. Do you know whether he worked for Spencer Kellogg & Sons? A. Yes, sir, he did; he was working from October 4th until December 20th.

Q. Last year? A. Yes, sir.

Q. When did you last see him? A. I saw him on December 20th, 25 minutes to 6 he went out; that is the last I saw of him.

Q. Where were you living? A. 228 West 149th Street. 4797

Q. Have you any children? A. No children.

Q. Have you seen him since then? A. No.

Q. Has his body been found? A. No.

Q. Have you made inquiry at different Morgues? A. Yes, sir.

Q. And you went around there looking at bodies to see if your husband was amongst them? A. Yes, sir.

Q. And you have not seen him since? A. No.

Q. Did you receive pay checks, payment in

4798 the form of a check, for money for wages after his death? A. Yes, sir.

Q. Was some of that money in payment of—money he had not yet earned? A. Yes, sir.

Q. You still have one? A. Yes, sir; I cashed the one he worked for, but the one he did not work for, I have that.

Q. You have not cashed that? A. No.

Q. How about his size? A. He was about 5 feet 7; he weighed 159 pounds the last time he weighed.

4799 Cross examination by Mr. Matteson:

Q. He left at 25 minutes of 6? A. Yes, sir.

Q. What time did he expect to get the boat? A. I do not know exactly what time.

Q. Do you know whether he had a number with Spencer Kellogg? A. He had a number.

Q. Do you know what that number was? A. I have the check number signed on a piece of paper home, but I do not remember exactly.

(Witness excused.)

4800 ———

ANNA LEIBOLD, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. Were you married? A. Yes, sir.

Q. What was your husband's name? A. Matthew Leibold.

Q. When were you married? A. 1906.

Q. Have you any children? A. Yes. 4801

Q. How many? A. Four.

Q. How old are these today? A. One is 12, one is 10, one is 6 and one is 3.

Q. Where did you live in December, 1926? A. 12 Vanderbilt Avenue.

Q. Is that in New York? A. Brooklyn.

Q. How old was your husband? A. 41.

Q. How tall was he? A. 5 feet 11.

Q. How much did he weigh? A. 175 pounds.

Q. Did he ever work for Spencer Kellogg? A. Five days before the boat went down.

Q. What time did you see him? A. Half past five in the morning on the 20th of December. 4802

Q. At your home? A. Yes, sir.

Q. Was he in good health then? A. Yes, sir.

Q. Happy and contented? A. Yes, sir.

Q. Have you seen him since? A. No.

Q. Have you ever seen his body? A. No, sir.

Q. Have you made a search? A. Searched, but could not find him.

Q. Did you look in the Morgues? A. Yes.

Q. How many? A. I just went to Bellevue Morgue, that is about all.

Q. His name is filed with the Police Department, Bureau of Missing Persons? A. Yes. 4803

Q. You have never been informed of any discovery that might be his? A. No.

Q. Did you receive any checks afterward from the company—did Spencer Kellogg ever send you his pay he earned? A. No, not a penny.

Q. Had he received the wages he earned for the five days? A. No.

Q. And you never heard from them since? A. No.

4804 Q. Did you file a claim in this proceeding? A. No, sir.

Q. Who is your lawyer? A. Mr. Deutsch and Mr. Axtell.

Q. I am Mr. Axtell; you did not know that? A. No, sir.

Q. Did he have another name? A. Matthew Smith.

Cross examination by Mr. Matteson:

Q. Do you know what sort of work your husband did? A. No, sir, I do not. He was a laborer, as far as I can tell.

4805

Q. Did he have any check number? A. Not as I can say.

Q. Did he ever have any other name but Smith and Leibold? A. Smith and Leibold; that is the only names.

NELLIE COYLE, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

4806 Direct examination by Mr. Axtell:

Q. Did you have a brother who was working for Spencer Kellogg? A. Yes, sir.

Q. What was his name? A. Thomas Coyle.

Q. When did you last see him alive? A. On the morning of December 20, 1926.

Q. At what place? A. At my home.

Q. Where was that? A. 128 West 102nd Street.

Q. Do you still live there? A. Yes, sir.

Q. Are your father and mother living? A. No, both dead.

Q. Did your brother have any wife or children? 4797
A. No.

Q. You have filed a claim in this proceeding? A. Yes, sir.

Q. How old was your brother? A. 39.

Q. How tall a man? What did he weigh? A. About 6 feet 1; he weighed about 175 pounds.

Q. Have you seen his body since his death? A. Yes, sir.

Q. Where did you see it? A. I first saw it in an undertaker's at Fort Lee.

Q. What date? A. March 30, 1927.

Q. Some three months after the disaster? A. 4808
Three months and ten days.

Q. Do you know where it was found? A. It was identified by the Spencer Kellogg Company and turned over to an undertaker at Fort Lee on March 30th, who notified me. I have his badge, taken off his body.

Q. You have his badge taken off his body? A. Yes, sir.

Q. Do you know the number? A. I have it here.

Mr. Axtell: I offer that badge in evidence, No. 3150. 4809

(Marked Claimants' Exhibit AAA in evidence.)

Mr. Axtell: We would like to have this payroll. This is another man apparently not on the list; apparently they identified him themselves, and we have his check. I think we are entitled to the payroll and I want the checks, and I want it over the week-end to examine it myself.

1810 Cross examination by Mr. Matteson:

Q. Do you know what kind of work he did? A. Laboring work, different kinds, according to the work they had.

Mr. Matteson: He is on the list as T. Cole.

Mr. Aldrich: We did not have his address, and did not know he lived in New York.

Mr. Axtell: That is all the more reason for letting us have access to the records and
4811 the payroll.

Mr. Axtell: I want that list we subpoenaed here, that was brought by Mr. Garber, those cards, some thousand of them, entrusted to the petitioners while they were getting up a list. We subpoenaed that, it was not their property, it belonged to the Security Company, and it has some bearing. It may not benefit us at all, but we would like an opportunity to look at it.

Mr. Jayne: It is marked for identification.

4812 The Court: What do you call the paper?

Mr. Axtell: Two bundles of cards.

The Court: How about it, Mr. Englar, two bundles of cards the other side want to inspect.

Mr. Englar: We had them here every day, but they are not here now. I will get them. But if we get them up here, I do not recognize that my friend has the right to take them and plow through them. I will

get them here and let the Court rule on what is to be done. 4813

Mr. Axtell: They dodged this thing when we had Mr. Garber here, and the records. It looked like a lot of work to go through with Mr. Garber to find out about it, and they promised by saying they would prepare a list of the payroll, and now we find an inaccuracy in the payroll as to Coyle. They attempted to give a correct list in in good faith of all men who lived in New York, and Coyle was not on the list, because their records did not indicate he lived in New York. This other card index will help us ascertain that. 4814

The Court: And make comparison with the testimony of individual claims.

Mr. Axtell: The only object we have is to find out and prove as competently as possible the number of people on the boat. Your Honor has an overwhelming lot of evidence of opinions of men, and one or two that counted 80 or 90, but these cards, together with the proof we have of missing bodies and found bodies and survivors, would prove almost to a mathematical certainty the number of people in that cabin, and that is a material point on the question of limitation, which is the sole point in this case that your Honor has to decide. 4815

Mr. Englar: There are no addresses on those cards. There are hundreds and hundreds of these cards, and if we are going to inject them into this case, I do not know where we will ever stop. They are not orig-

4816 inal records, no records at all, they are cards made by this man from the Insurance Company, who went over and made copies of a lot of cards in our plant. I have sent for them. I do not want to conceal them. But I do not think they have any bearing on the case, and I object to dumping them wholesale into this record.

HARRY J. ALDRICH, recalled.

4817 By Mr. Axtell:

Q. I believe you said you were the secretary of this company at the present time? A. Yes, sir.

Q. And you have been in attendance on this trial since its beginning? A. Yes, sir.

Q. You have been working on the payrolls for the last few days with your secretary? A. With my assistant.

Q. In order to furnish us with a list of people who lived in New York? A. Yes, sir.

Q. Who were employed by the company at the
4818 time, December 20, 1926? A. The week ending December 18th.

Q. Did you run across in your search any list of the men, extras, who were engaged on Saturday, the 18th, to return on Sunday, the 19th, and Monday, the 20th? A. That is the list you asked for yesterday?

Q. Yes. A. Not as yet.

Q. Have you seen Mr. Nelson? A. No.

Q. Have you communicated with him by telephone? A. No, I have not.

Q. Have you caused such communication to be made? A. I have. 4819

Q. Have you ascertained whether he is able to come to court? A. It is possible he may be able to come to court Monday.

Q. He has been ill? A. Very ill.

Q. Have you ascertained whether he has a memorandum or cards or a check list? A. I have not had a report from my communication. I sent a man from the plant up there. Whether he went there last night or this morning, I am not informed.

Q. You are familiar with the employment system of the company in 1926? A. Yes, sir. 4820

Q. Was there a practice on the part of the person who engaged men to come back Monday, that is, if engaged Saturday for some day, anticipating the arrival of a seed ship, to keep a list of the men who are hired? A. In this way, simply as a memorandum. No list was preserved. I will say this, that memorandum I would like to see myself, and when we came to look for that memorandum somebody had pilfered it from the office, and while I have no means of knowing where it went, I should judge from a statement you made in court the other day that Mr. Pelissier can give 4821 you some light on it.

Q. You suspect Mr. Pelissier might have taken that list? A. I do not know, only from what you said in court the other day, that he furnished you with considerable information from our office.

By the Court:

Q. Who is Pelissier? A. He is a time clerk who was in employment there at the time of the accident and who, shortly after the accident, be-

4822 parse very inattentive to his duties, to the extent that we had to discharge him.

By Mr. Axtell:

Q. Did you discharge him? A. Personally?

Q. Yes. A. I authorized it.

Q. Were you there at the time? A. I was not.

Q. Did you witness his inattention to duties? A. I did.

Q. Did you direct his discharge? A. I did. I will qualify that answer in this way: I had myself personal knowledge of his inattention, it had
4823 been called to my attention by the works manager of the plant, and I authorized his discharge. The discharge actually took place by the works manager.

Q. Do you recall that he helped prepare a list for Mr. Garber of the men who resided in New York? A. No, I do not; I did not know that he did.

Q. Every week-end you make a payroll sheet of the people employed during the week? A. Yes, sir.

Q. Did you ascertain how many people were on your total payroll on December 18th? A. I
4824 believe the list I furnished yesterday shows 470 men.

Q. That is the total? A. Total.

Q. At the plant? A. At the plant.

Q. How many of those resided in New York, according to your records? A. If I remember right, your list shows 128.

Mr. Engler: Let him have the list so he can be accurate.

A. 128.

H. J. [illegible]

Q. And [illegible] you know, accurate? A. [illegible] edge.

Q. Of the men who [illegible] Yes, sir.

Q. And these men [illegible] the boat? A. While they were [illegible]

Q. How many men did you employ extra on a seed ship usually? A. That I would have to estimate, or go back to records to get it accurate. That would depend on conditions. We usually required about 50 men, extra men, to unload the seed ship.

Q. Did you get any men from New Jersey for that purpose? A. We never kept a record of how many men we got; we estimated around 20 to 25 per cent. came from New Jersey.

Q. How many longshoremen did you use altogether in unloading a vessel? A. I said about 50.

Q. Was it the practice to advertise in the New York papers for help? A. Yes, sir.

Q. You never stated how many you expected or how many jobs you had, or controlled the number of applicants? A. As to the advertisement, I have to refer to the local representatives of the plant. I did not write the advertisement myself.

Q. That was under Mr. Stover? A. Yes, sir.

Q. And he authorized somebody to do it? A. Yes, sir.

Q. And he simply advertised for men at so much an hour and they would come there? A. As I said, the details of the advertisement I could not testify to, because I did not write them, but my memory is that was the substance.

4828 Q. As to Mr. Coyle, whose name apparently is not on this list you prepared, you suggested his address was not known. A. In referring to a copy of the payroll I find he is on the payroll as T. Cole, and we have no address for him.

Q. Similar mistakes might have been duplicated in payroll keeping? A. Very few. As far as these ship men are concerned, we were never particular about taking their addresses or keeping the records.

Q. Are you satisfied Mr. T. Coyle was in your employ at that time, the man whose sister testi-
4829 fied a few minutes ago? A. We do not deny that.

Q. How about these: Fernando Martin. You have on the list you furnished us two F. Martins. I believe the same address appears for both. It is a duplication or an error? A. 435 Eastern Parkway?

Q. Yes. A. These men—

Q. This boy gave an address, 417 West 53rd Street. A. I find F. Martin on here twice.

Q. It occurred to me the stenographer might have made a mistake. A. One is spelled M-a-r-t-i-n and one is M-a-r-t-e-n. With these men we found
4830 it difficult to get their correct addresses, and we found on investigation there will be a number of men all living in one or two rooms, so that I could not say that these addresses are all correct. They are addresses that our records show.

Q. You have not two F. Martins living at the same address, have you, on your original records? A. Not to my knowledge.

Q. That is probably a stenographer's error? A. It probably was.

Q. Are you willing to concede this boy's father

(indicating Julius Martin) was working there at 4831
the time? A. There was a man by that name Martin working there. Whether he is that boy's father, I cannot say.

Q. Spanish-speaking, Chilean? A. I would have to refer to the records to verify this.

Q. This list Mr. Garber got up, what was that? A. I do not know. It is information he went and got for myself.

Q. You had nothing to do with that? A. Nothing to do with it.

Q. What was the total number of people employed by your company in 1920 at that plant, do 4832
you remember? A. There is a sheet of this (indicating an exhibit), that has been taken off.

(Witness was handed a paper.)

A. (Continuing.) December, 1920, 317.

Q. What was the next year? A. December, 1921, 404.

Q. Next? A. December, 1922, 327.

Q. Next? A. December, 1923, 269.

Q. Next? A. December, 1924, 372.

Q. Next? A. December, 1925, 619.

Q. Those are just the average for the month, or 4833
one particular week for the month? A. The week corresponding with December 18th.

Q. Has the plant been enlarged at all since it was built? A. Since the plant was built?

Q. Yes. A. That is rather indefinite.

Q. I mean since you started manufacturing.

Mr. Englar: I object to that. We are going back in ancient history here.

The Court: Objection sustained.

4834 Q. What I am trying to get at is this: This list here, is that list from your knowledge typical of your payroll for those years? A. Yes, sir.

Q. Or would it be that some of those times there happened to be weeks when there was no seed ship in and no extra employment? A. This 1925, if I remember correctly, in looking it up yesterday, there was a seed ship in at that time.

Q. 1924; one year there you only had a couple of hundred people. A. That was 1923.

Q. Why was that? A. The mill shut down. The way we operate, we have mills in four different localities in the United States, and we operate these mills according to trade conditions. When the western mills are running full capacity—we have what we call four mills in New York, or Edgewater—when the trade conditions are such, if we are running the western mills to full capacity part of this mill is shut down. When this mill is running at full capacity the western mills are shut down, but as far as plant capacity is concerned, there has been no material change in some years.

4835

Q. There was an increase in plant capacity when you put in extra presses, wasn't there? A. If you give me the time.

4836 Q. You give me the dates; you give me the information. A. Do you want a history of the plant from the time it was built?

Q. Yes, briefly. A. I will have to go back 25 years.

Q. Is this plant 25 years old here? A. Approximately between 20 and 25 years.

Mr. Englar: I object to that.

Q. I understood from Mr. Medlicot you put in

some extra presses. A. Mr. Medlicot gave you 4837
the wrong information.

The Court: I do not see the relevancy of this. It is taking up time, and I sustain the objection.

Q. Do you find the name of George Venegas, or something that corresponds to it? A. Yes, J. Venegas, 2023 Seventh Avenue.

Q. Do you find John Castro? A. Yes, 793 Washington Street.

Q. And Andrew S. Murphy? A. We have him on here as S. Murphy, 215 West 124th Street. 4838

Q. John A. Turner, have you got him? A. J. Turner, 1744 Atlantic Avenue, Brooklyn.

Q. And James Heap (in that case the man lived abroad), or I will give you these names so you can look out for them, Ortiz, Kakos— A. There are two Ortizes here.

Q. Eladio? A. 53 West 112th Street.

Q. Kakos, Graham. A. Were those men all on the 18th payroll, or were you reading men here to come back Monday morning?

Q. We are giving you names claims are filed for. A. If you have names to come back Monday 4839
morning, they won't be here.

Mr. Englar: I do not wish to take a technical position, but it seems to me this is unnecessary. Mr. Aldrich has gotten up that list which he says is a complete abstract of the payroll, and we have submitted the original payroll, and it sems to me it is a matter of comparison.

The Court: It seems so to me. It does

4840 not seem of any use to lumber up this record with this matter that can be so easily agreed upon.

Mr. Axtell: I offer that in evidence.

(Marked Claimants' Exhibit BBB in evidence.)

Q. Have you the payroll for the week following this disaster? A. I have it over at the office. I had it here yesterday, but I haven't it here this morning. I can furnish it to you.

4841 Q. Will you bring that over Monday? A. Yes, sir.

Q. Were these cards Mr. Garber got, did you observe whether they were on your stationery? A. They were our stationery, but evidently they were borrowed from the office and he had them made up.

Q. He had them made in the office? A. He made them up.

Q. Didn't Pelissier do that work? A. He might have asked Pelissier to help him, but it wasn't under the direction of Mr. Nelson.

4842 Mr. Axtell: I will offer the payroll of December 18th in evidence, and we will ask for the one following.

The Court: Yes, Mr. Aldrich says he will bring it.

Mr. Axtell: Will you let us look at the cards this afternoon? Maybe we will agree there is nothing to encumber the record with.

Mr. Englar: You can look at the general form. I am not willing to leave them with you.

Mr. Axtell: We will look at them in your presence. I want to satisfy my curiosity. 4843

By Mr. Jayne:

Q. You say these cards were forms from your office. What were they used for? A. Our regular time card, every week; we buy the time cards in large quantities.

Q. That form was a form of time card? A. Yes, sir.

Q. That gave the names of employees? A. Name and clock number. 4844

Q. And these marked for identification were your time card forms? A. Apparently so.

Q. Were the names on those card forms the names of employees of yours? A. I assume they were, but I did not give—I have not examined those cards to see if they are correct or not.

Q. I did not ask if they are correct. They are your forms of time cards? A. Forms we are using, yes, sir.

Mr. Axtell: I offer the certificate of inspection of the motorboat "Doris," about which we had some evidence that it carried 160 passengers, which shows she was an open boat. 4845

Mr. Englar: I know she is not an open boat. I know perfectly well she is not.

Mr. Axtell: We offer it.

Mr. Englar: I don't mind you putting it in.

(Marked Claimants' Exhibit CCC in evidence.)

4846 Mr. Axtell: And it shows she has two lifeboats.

Cross examination by Mr. Englar:

Q. You stated that the total number of men in your employ who lived in New York was 126 during the week ending December 18th. Does the first page of this Exhibit BBB show how they were divided in shifts? A. Yes, it does.

Q. Now, Mr. Axtell read you a series of names and asked you if you found them on your list. It is correct, is it not, the list you were referring to
4847 was this list, BBB? A. Yes, sir.

Q. And when you stated you found the names—A. The names I called off I found.

Q. Your answers meant those names appeared on your payroll for the week ending December 18th? A. Yes, sir.

Q. That is all you meant to say? A. That is all I meant to say.

(Witness excused.)

Mr. Axtell: I offer in evidence the letters of administration certified by the
4848 Courts of 39. Some evidence has been offered as to the identity of these men, some of them as being on the boat, and there may be some that there is no evidence about. The letters here are all attached to this file with a complete list of the men, and I suggest they be marked in evidence and the stenographer can copy the list from this typewritten list.

Mr. Englar: Are they certified, Mr. Axtell?

Mr. Axtell: I believe so. 4849

Mr. Englar: My position on this matter is this: I, of course, have no objection to the admission of certified copies of letters of administration as establishing the standing or right of any claimant to represent a particular estate, but I object to them most strongly as being any evidence that any evidence that any particular man was on this boat.

The Court: Except where testimony is given.

Mr. Englar: Yes, if established independently he was on the boat, that is a different matter. 4850

Mr. Axtell: Of course, I assume Mr. Englar and I will both agree that the Court will not be influenced by uncorroborated letters of administration.

The Court: The mere offering of letters of administration will not be considered as any evidence that the person specifically named, that is, the deceased, was on the boat at the time of the disaster.

Mr. Axtell: I offer them for such weight as they may have. 4851

Mr. Englar: That is assuming they are certified.

The Court: I will assume they are regular.

(Marked Claimants' Exhibit DDD in evidence.)

(The list attached to Claimants' Exhibit DDD in evidence, is as follows:)

4852 1. Est. of James Alexander—Vera Alexander.

2. Est. of Charles Burns—Lena Burns.

3. Est. of Joseph Basnett—James Keys.

4. Est. of John Brennan (also known as Thomas Brennan)—Robert Francis Bell.

5. Est. of John Castro—Francisca Gomes Castro and Jose Reyes.

6. Est. of Domingo De Meza—Margarita De Meze and Felipe Durate.

7. Est. of Andrew S. Murphy—Annie Murphy.

4853 8. Est. of Balfour Corriette—Angelina Corriette.

9. Est. of Urah Pusey—Adina Victoria Pusey.

10. Est. of Joseph Dobranski—Michael Dobranski.

11. Est. of Frank Eberle—Anna Eberle.

12. Est. of John Hartman—Margaret Hartman.

13. Est. of Arthur Johnson—Mary Johnson.

14. Est. of John A. Turner—Leola Turner.

4854 15. Est. of Fred Sumner—Virginia Sumner.

16. Est. of George Nemets—Stephen Nemets.

17. Est. of Victor Kreminsky—Frank Labiak.

18. Est. of Frank S. Marques—Marie Marques.

19. Est. of Carlos Morales—Josefina Morales.

20. Est. of Anthony Warren McGoldrick —Mary E. McGoldrick. 4855

21. Est. of Thomas Coyle—James Coyle.

22. Est. of Clarius Vizcay—Rose Vizcay.

23. Est. of John Benjamin Samuels—Edith Samuels.

24. Est. of Clifford Rawlins—Laura Rawlins.

25. Est. of Paul Saul—Paul Lieneck.

26. Est. of James Heap—Robert F. Bell.

27. Est. of Eladio Ortiz—Mario Ortiz.

28. Est. of John W. Kakos—John Kakos.

29. Est. of William Graham—W. R. Southwick. 4856

30. Est. of Joseph Hamilton—Emerance Hamilton.

31. Est. of Samuel Daniels—Julia Daniels and Mary Slaughter.

32. Est. of Matthew Leibold (also known as Matthew Smith)—Anna Leibold.

33. Est. of Roy A. Amlaw.

34. Est. of Fernando Martin.

35. Est. of Ernest Boyer—Raymond Boyer.

36. Est. of Adolphus Mathias—Clementine Mathias. 4857

37. Est. of Nathanial Wisdom—Annie Belle Wisdom.

38. Est. of Bert Ramsland—Nils Ramsland.

39. West of Carl Tighpen—Letters of administration.

Mr. Axtell: On behalf of Mr. Jayne's clients I offer the four he had marked for identification, and ask that they be marked in evidence under the same ruling.

4858 The Court: Received.

Mr. Axtell: There is a Steamboat Inspector from the "Doris" here, but he is the wrong man. The certificate seemed to indicate she was an open boat. I do not know how much importance it is in the matter, but I expect he will be here Monday. We rest, with the exception of Mr. Lang's testimony. Of course, if there should be more widows to come in to prove bodies——

The Court: We ought to close the case some time.

4859 Mr. Axtell: The Court might reopen it. We sent for those people, and they are poor people, and may come in later.

The Court: I understand that.

Mr. Englar: As I understand, the program is Mr. Axtell rests with the exception of calling any more relatives of deceaseds, and Mr. Lang and possibly a Local Inspector or surveyor who looked at the "Doris"?

The Court: Yes, sir.

Mr. Englar: And we are going over to

4860 examine Mr. Lang now as soon as we can arrange a time, that is, this afternoon.

The Court: Then you both agree the court shall stand adjourned until Monday morning?

Mr. Englar: I would like to call attention to page 1567 of the minutes, where a lot of these police cards were offered, and in two cases it appears they were marked for identification, but with respect to TT-1 to TT-30 the record indicates they went in

evidence. I never consented to their going in evidence, and I would like to clear the record up by just stating—— 4861

The Court: What are they?

Mr. Englar: They are police cards. These things here, they are the photostat copies. Down here it appears they are marked for identification.

Mr. Axtell: I think I can agree with counsel he did not consent that they go in evidence, but he consented they be marked for identification, and if, after checking over the records, if they were clear, that they might be received in evidence. 4862

The Court: Where are they received in evidence?

Mr. Englar: Right here. (Indicating.)

The Court: Then it is understood now that the record may be corrected so that "Marked Claimants' Exhibit TT-1 to TT-30 inclusive, in evidence," as indicated on page 1567, is modified so as to read these cards are received for identification?

Mr. Englar: Yes, and I am willing to go further, and I do not dispute they are correct copies of the record, and may be used with the same force and effect as the records themselves, but before agreeing that they go in evidence, I want to check them. 4863

Mr. Axtell: We assumed these would go in as part of our proof of missing persons or persons on the boat. We have not made preparation to meet the contingency if counsel objects. We would have to go over the thing again and bring more witnesses. You probably won't object.

4864 Mr. Englar: We will probably find a lot of them all right, and if we do, we will agree that they are all right.

Mr. Axtell: The Steamboat Inspector is here now. May we examine him?

The Court: Yes.

NORMAN J. BROWN, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

4865 Direct examination by Mr. Axtell:

Q. You come in response to a subpoena? A. Yes, sir.

Q. Are you a steamboat inspector? A. No, sir, I am a clerk.

Q. You brought a record with regard to the "Doris"? A. I did.

Q. Is this a picture of her on the right? A. Yes, sir, that is a picture of the vessel.

Mr. Axtell: I offer it in evidence.

4866 The Court: I suppose that is a public document.

The Witness: It is not a public document.

Q. What is this? A. A private record kept in the office of the Steamboat Inspectors.

Q. Who does it belong to? A. A document kept by the Inspectors, but not a required document.

Mr. Axtell: I offer it in evidence. We don't need to keep it here.

Mr. Englar: I object to it. I do not know whether it is right or not. If it is, I will consent to have it go in. I don't know whether this is a picture of the "Doris." 4867

Mr. Axtell: He says it is.

By Mr. Englar:

Q. Have you ever seen the "Doris"? A. No, not that I have ever seen actually.

Mr. Englar: The paper does not even say the "Doris" on it. It may be. 4868

By Mr. Axtell:

Q. This page here relates to the "Doris" and gives her measurement? A. Yes, sir.

Q. And its picture is attached to it? A. Yes, sir; it is presumed to be a picture of her, but I could not state from personal knowledge it is.

Mr. Axtell: That is a double-decked steamer.

The Court: The witness does not know whether that is a drawing of the "Doris" or not. I do not quite see the necessity of having a picture or drawing of her anyhow. 4869

Mr. Axtell: They are making a great to-do of the fact of her length and beam and the number of people she carried.

Q. Can you tell us what her square feet of deck space is from that record?

4870 Mr. Englar: Can't he use the official record for that?

A. The record here is given as 1270.5 square feet.

Q. What does it show on the other? (Referring to the book.)

The Court: What was drawn to my attention this morning about the "Doris"?

Mr. Axtell: The Custom House certificate. That does not show the deck space. That does not show she is double-decked. It shows her sides are open. She has not

4871 such a cabin as you have here.

Mr. Englar: She has an enclosed cabin.

Mr. Axtell: Yes, sir, but the windows are very large.

The Witness: This record does not show it.

Mr. Englar: I take it the official record does not show anything about square feet; the witness has never seen her, and I submit you cannot prove it that way.

Q. Mr. Matthews is dead, the inspector? A.

4872 Yes.

Q. This was kept by Mr. Matthews? A. Yes, this drawing was made by Inspector Matthews, and these are his figures.

Q. And this whole report is supplemented by that record there? A. Yes.

Mr. Axtell: I offer that as well as this.

Mr. Englar: It appears the record which this man made, who is dead, was not made pursuant to Government requirements, is a private book, and there is noth-

ing to show when it was made, whether it was made at the same time as the official record, or when. The boat may have been altered. I am willing to have it marked for identification. 4873

Mr. Axtell: Will you consent it go in subject to your ascertaining it is correct? We will get the owner of the boat, if necessary.

Cross examination by Mr. Englar:

Q. When that picture was taken can you tell from that picture whether she is a steamer? A. Judging that she has a funnel, I judge she was a steamer. 4874

Q. In other words, at the time that record was made she was a steamer? A. She may have been what is called a steam launch.

Mr. Englar: I think the boat has been entirely changed since the record was made.

The Court: You said you are willing to have the record marked for identification?

Mr. Englar: I have no objection if the clerk is willing to leave that record here and have it marked for identification, and we can have somebody who has seen the boat look at it. 4875

Re-direct examination by Mr. Jayne:

Q. Was that book kept by the Steamboat Inspector in the course of his duties as such? A. Yes; each time a passenger vessel is first inspected the man who inspects the vessel is re-

4876 quired to make these drawings and plans by the Local Inspectors.

Q. That is a rule of the Local Inspectors that requires them to do it? A. Yes.

Q. And they do do it? A. Yes, sir.

Q. And this is a book, and these figures are used as reference in making up these little books? A. Any future ones.

Q. They are used as reference for making the small registration book? A. Yes, sir.

4877 Mr. Jayne: I think it is admissible here. It is a record kept by an official in his official duties.

The Court: I did not understand him to say at the start it was kept in pursuance of rules and regulations.

Mr. Englar: Neither did I.

Mr. Jayne: He was giving his conclusion that they are not official records. That was a conclusion. Now I am asking for the fact.

By the Court:

4878 Q. I understood you to say this inspector kept that book simply for his personal use and personal convenience? A. The Local Inspector who is in charge requires every assistant inspector to make this report, but the rules of the Department of Commerce I do not think require it.

By Mr. Jayne:

Q. Your inspector can make rules? A. He has power to tell the assistant inspectors what to do.

By Mr. Englar: 4879

Q. When was the record made? A. September 29, 1922.

Mr. Englar: That was made in 1922.

The Court: I am not satisfied it is an official document, and I sustain the objection. It may be marked for identification. I understood Mr. Englar to say he would make inquiries and if the diagram is verified by information he is seeking, he will consent that it be received in evidance. We will allow the matter to stand 4880 over.

By Mr. Axtell:

Q. These little books are made, a new one every year? A. Yes, sir.

Q. And there is nothing in this book to indicate whether a boat has a bulkhead or not? A. That I do not know without looking at the book.

Q. Will you look at it and see? A. She has no bulkheads.

Q. Where do you find that? A. Right there (indicating). 4881

Q. I see it is marked. What other boats have you in this list, any of these others we had evidence about? A. That I could not say. I was not here before.

Mr. Englar: He has not any records of any other boats with him, has he?

Mr. Axtell: I don't know. Maybe these other boats are in this same book.

4882 The Court: Do you want to ask him any more, Mr. Englar?

Mr. Englar: No.

Mr. Axtell: I would like to see if he has any of the other boats.

Q. Have you the "Aljohn"?

Mr. Matteson: If your Honor please, I submit it has already been ruled this book he is consulting is no official record, and not competent evidence, and I submit we should not look further to see if he has

4883 other things there.

The Court: Except Mr. Englar said he would make inquiries regarding the "Doris", and he might feel the same way regarding the others.

Mr. Matteson: We would be glad to do the same thing about any other boat.

A. I have not.

Q. Have you the "Atlas"? A. Yes, sir.

Q. She is a steel boat? A. No, it is wooden.

Q. Steel bulkhead, that is it. There is no pic-

4884 ture of her? A. No.

Q. Is she a single decked boat?

Mr. Matteson: I object to any testimony from this record.

The Court: Sustained.

I said a moment ago I did not think I should receive this book in evidence because it is a book not authorized by the Department of Commerce and there is no rule or regulation requiring any such inspector to keep such a book.

Mr. Axtell: I want a list of the names 4885
of the ones he has here.

The Court: It is not necessary to get all this into the record, is it?

Mr. Axtell: No.

Adjourned until Monday, January 30, 1928, at 10:30 A. M.

Deposition taken at 208 46th Street, Union City, New Jersey, January 27, 1928, at 3 P. M. 4886

Present:

MR. ENGLAR.
MR. AXTELL.

FRED CHARLES LANG, being duly sworn and examined as a witness on behalf of the claimants, testified as follows:

Direct examination by Mr. Axtell:

Q. You have not made any written statement 4887
concerning your experience in operating the "Linseed King", have you? I mean, you have not signed any statement? A. Why, I think I made one when I was working for Spencer Kellogg at the time.

Q. A long time ago? A. Oh, yes; that was when the boat was sunk, right after the boat sunk, I made one statement, I think.

Q. You remember my secretary, Mr. Schlaifer, came over to see you one evening? A. I did not make any statement.

4888 Q. You did not sign any statement then? A. No.

Q. You talked to him? A. Yes.

Q. He made a report to me of what you said. How old are you? A. How old am I?

Q. Yes. A. 27.

Q. Are you employed now? A. Yes.

Q. Where? A. J. L. Hempel,

Q. What is your job? A. Electrician, motor repairs.

Q. Do you live here in this city? A. No. 610 Union Avenue, which is 37th Street, Union City.

4889 Q. Are you married? A. Yes.

Q. You are just stopping here temporarily? A. Just here while I am sick.

Q. You are not able to go to court because of an injury you have had recently? A. Right.

Q. In the nature of a strain, is that right? A. Right.

Q. Did you ever work for Spencer KeHogg & Sons Company, Inc.? A. Yes, sir.

Q. Do you remember about when you began there and when you left there? A. Well, I left there about, let us see, I guess I am out of there six months now, and I worked for them a year
4890 and a half, maybe more than six months.

Q. Did you work there at the time this "Linseed King" vessel was lost? A. Yes.

Q. Went down? A. Yes.

Q. How long had you worked there before that time? A. About a year and a quarter.

Q. And when did you say you left there? A. About six months ago.

Q. That would be in August? A. Yes, I guess it was around that time.

Q. August, 1927? A. Yes.

Q. So you were really employed there about two years? A. About a year and a half, possibly a little more. 4891

Q. You were there a year and a half before the disaster, which was in December, 1926, until August, that would be fully two years, would it not? A. I do not know the exact dates.

Q. Did you ever operate the "Linseed King"? A. Yes, I run it for about a year and a half.

Q. At night time? A. Nights.

Q. You were the electrician? A. Right.

Q. You had to be on duty at night as electrician? A. As electrician.

Q. And as part of your duties you were told to operate the boat? A. Right. 4892

Q. From whom did you receive orders to operate the boat? A. From the superintendent.

Q. You mean Mr. Stover? A. Mr. Stover.

Q. Were you under his supervision more or less? A. Well, I was more or less, but I had the chief electrician over me.

Q. You had? Who was that? A. Mr. Streuli.

Q. Do you know where he is now? A. I guess he is still working for them.

Q. Was there any other person running the boat at nights besides you? A. No, I was the only man that handled it at night while I was there. 4893

Q. How about this man Dressler? A. He was not on the night shift, he was on the day shift.

Q. He operated her in the day time sometimes? A. I guess he relieved the captain sometimes; I was on the night shift.

Q. Had you ever operated boats before that? A. Oh, yes, I operated with a friend of mine, but not to talk about, that is, not much.

4894 Q. Some friend of yours had a boat? A. Had a boat.

Q. And you used to go out on parties with him? A. On parties with him.

Q. Did you receive any instructions in the handling of the boat in the beginning? A. Oh, yes, I was broke in.

Q. By whom? A. By Marty Dinkel.

Q. Did you ever meet the crowd for the seed boats, for the first trip in the morning? A. Yes, I made the trip sometimes.

Q. Who instructed you to do that? A. To do
4895 what?

Q. To meet the early boat, or to make the first trip in the morning? A. Sometimes I would take that trip if the day captain did not show up, if he was sick. That was the understanding, that I was to take the first trip in the morning if the day captain did not show up.

Q. Did you ever meet her when there was a crowd there of extra men? A. No, not with the day captain.

Q. Did you ever go over there on any occasions when this seed boat was in and they had advertised for extra help? A. Sure, make the first
4896 trip.

Q. Do you remember how many people you carried on those occasions? A. From 80 to maybe 90 people, that is, when a seed boat was in, but that wouldn't be all the time.

Q. Do you know how many life preservers you had on the boat? A. We had about 80 or 85, I am not sure, on her.

Q. Do you recall whether there were any in the top of the boat? A. On the ceiling?

Q. Yes. A. Oh, yes, they were all up in a rack like. 4897

Q. Did you have some on the seats in the back too? A. On both sides, on one side on the seat, on both sides, it was.

Q. Did you have any under the forecastle forward, do you remember? A. Under the floor?

Q. No, not under the floor but under the bow of the boat in front of the pilot's cabin there? A. Yes, I think there was two or three, but they were never used.

Q. Well, they were on the boat? A. They were on the boat, yes. They were in the locker, like, where we kept the tools and stuff. 4898

Q. Do you think there were not over three there? A. About three, I guess there was there.

Q. You do not know exactly how many life preservers there were altogether? A. No, I do not know at all.

Q. Those three were shut up so they would not be seen by anybody going in to look it over? A. You would have to open the door.

Q. You would have to open the door. After you opened the door you would see them, of course? A. Yes, surely.

Q. Were you told by Mr. Stover how many you should carry, and how many you should not carry or anything? A. No, I was never instructed on that. 4899

Q. You never had any instruction on that? A. No.

Q. You never made any count to see whether you carried more than you had life preservers or not, did you? A. Why, no.

Q. You never thought anything about that? A. No.

4900 Q. Did you ever actually count them at any time? A. What, the men?

Q. Yes. A. I counted them once in a while.

Q. And what was the most you ever remember having? A. The most I ever remember coming off was about 91 or 92.

Q. Was that in the winter time or summer time? A. That was towards spring, right in the beginning, when the weather started to get warm.

Q. Was the cabin pretty full when you had that many in? A. Oh, yes, the boat was loaded then.

4901 Q. Fully loaded, so you could not get any more in? A. No, it would not be advisable to try to put any more in there.

Q. Well, of course there is, you fill a cup full of water, and you cannot put any more in? A. Yes.

Q. The same way with peas, I suppose. Human beings can be squeezed in perhaps a little more? A. Yes, you might get more in if you like, let them ride outside on the boat, but that was one order I always had, they wasn't allowed to ride outside the boat.

4902 Q. They did not allow them outside? A. No man was allowed outside the boat.

Q. How could you stop that if the boat was alongside the dock and they were crowding on? A. You would not leave the dock. I tied up against the dock one night from about 11 o'clock until, about 11:20 until 2 o'clock in the morning, on account of the load.

Q. That was in New Jersey when they called the police down that time? A. In Jersey, yes.

Q. And in New York if you happened to be alongside the pier and you had a load, and if they

jumped on the stern end of the boat and you were just pulling out, you could not help that? A. No, not right at the time, although if they pushed in you could push them back. 4903

Q. Did you have a deckhand? A. In the winter months if the water was real bad I got a deckhand on account of rough weather; I would get a man to throw the ropes.

Q. You mean up on the dock? A. For handling the ropes on each side when you come in.

Q. It would be helpful, I suppose, in controlling the number of people getting on the boat too? A. Yes, surely.

Q. At the time you speak of, when you had that crowd on over in Jersey and had to call the police, did you have a deckhand at that time? A. Why, yes, I had Heinz, he was the night machinist at that time. 4904

Q. Was he assigned to the work of helping operating the boat? A. He used to act as deckhand.

Q. How did you control the men when you had two men there? What means did you use to see to it that too many did not crowd on? A. You could always tell by the outside of your boat, and by looking down into the cabin of your boat to see how jammed up they were. Of course that night when we called in the cops the crowd got into the boat, and they were all piled around the sides. 4905

Q. On the outside? A. On the outside of it.

Q. How low down in the water was she sunk then? A. That is hard to say; you could not see that very well in the night there.

Q. You figured she was pretty low? A. Oh, yes, a fancy load when those men were piled on the side.

4906 Q. 8 inches, 10 inches, a foot, or what would you say was your freeboard at the side? 2 feet? What would it be? A. I do not know really what that would be.

Q. Do you know what it was when you counted 90, you said 92 or 93? A. Well, we had a board running on the side like a water gauge; if you carried about 90 men that would be about covered, that side rudder on the sides of her.

Mr. Axtell: We have not got any photographs here, have we?

4907 Mr. Englar: No. He means that chafing piece.

The Witness: That is it.

Q. Was it that? A. I think there was a chafing piece on the side of the boat.

Q. Around the sides? A. Yes.

Q. That molding around the gunwale, do you mean? A. Yes.

Q. That is at the very top of the boat? A. No, it is not; that was about a foot, I guess, it was maybe not a foot, I do not know.

Q. I do not remember that. A. It is not the 4908 gunwale.

Mr. Axtell: We will just make a little sketch.

The Witness: I do not know what they call it.

(Mr. Axtell draws a sketch.)

Mr. Englar: I suggest you let him put the piece on there.

Mr. Axtell: Yes, I am going to have

him do that, just to get some idea of the boat. 4909

The Witness: What you was referring to before was this here piece running up in here.

Q. Yes, that is the gunwale strip. A. Now, we had a piece down around here, this is really a strip——

Q. Yes. A. I do not know just about how wide that was.

Q. Just mark that A on each end of that thing.

(Witness marks sketch.) 4910

Q. Now, there is a strip; we can undoubtedly see that from the photographs? A. Yes.

Q. You say the water would come where? A. It would just cover that strip if you had a heavy load, about 90 or 92 men on.

Q. Just cover it? A. Yes, sir.

Q. That, I suppose, was at a time when there was not any water in the boat. Did she have any water in her then? A. Why, no, not to talk about.

4911

Mr. Axtell: I offer the sketch in evidence.

(Received in evidence and marked Claimants' Exhibit EEE of this date.)

Q. Now, were you on duty on Sunday before this accident? A. Yes, sir. I worked every Saturday night right up until Sunday morning.

Q. You did not operate her on Sunday morning

4912 in the day time? A. Just one trip Sunday morning; that Sunday morning we made two.

Q. What time did you make the trip Sunday morning? A. That Sunday at 7:20, and the last trip was about 9:10 or 9:20.

Q. How many people did you bring over Sunday morning on your first trip? A. On the first trip we took men over to New York, and coming back from New York—well, going to New York we took the press men, and coming to Jersey we brought the extra hands, we brought over 40 or 45 men that Sunday morning.

4913 Q. Were there any standing up when you had 45 men on? A. Yes, there was a few.

Q. Was that the only trip you made Sunday morning? A. Then I took them back again at 9:10.

Q. They did not work? A. They did not work; no ship come in.

Q. Did you maintain a regular schedule usually with that boat? A. We did, outside of that 9:20 trip; that was a special trip.

Q. On Saturday were you working that boat that night? A. Yes, sir.

Q. That is the night you referred to. How
4914 about Friday night before that? Were you running her that night? A. I run her every night.

Q. And Thursday night? A. Right.

Q. Do you remember anything about the weather those nights? A. Well, it might have been a little rough.

Q. Do you remember whether it was cold or not? A. I could not say how cold it was.

Q. Did you see any wreckage or anything like that in the river? A. No.

Q. Did you see any ice in the river? A. I seen ice in the river Sunday morning on the two trips we made; we had ice that Sunday morning but it was light at that time, I think. 4915

Q. Did you see any ice at any time before that? A. In December?

Q. Yes. A. Not before that.

Q. You mean you did not see any at all? A. Not before that, no.

Q. Not even little pieces alone just along by the shore? A. We did not hit any ice until that Sunday morning; that was the first time we hit ice with the boat.

Q. Did you notice at the pier on this side whether there was any ice in the slip, not floating out in the current, but in against the shore, that had drifted in there? A. No. 4916

Q. You did not notice any? A. We did not have any until that Sunday at that pier.

Q. How many pieces of ice did you see there? A. That Sunday morning, that was the first sign of ice in the river up there, and it was light at that time, but I judged there was ice coming down.

Q. Who was in charge of the plant that Sunday? A. It was really Mr. Stover; probably he was in charge, but he did not come there until about 10 or 11 o'clock, I guess, on Sunday morning. 4917

Q. You didn't see him? A. I didn't see him.

Q. In his absence who would be normally in charge of the organization there? A. Well, in the night there was nobody in charge. Everything would be reported in the morning.

Q. I know, but on Sunday the plant was not running, but who was in charge? A. Nobody out.

4918 side of the gate man. He had to let us in and out.

Q. Who was he? A. Charlie Greenhouse.

Q. Well, wasn't Hank Johannis, was he in charge on Sundays? A. That is after he had come down, but us fellows never used to see him.

Q. Wasn't he there Sundays? A. We would go off early. Of course that Sunday we worked overtime.

Q. Did you turn the boat over to anybody that day? A. No, I tied it up.

Q. Was there any ice in that slip? A. Not in that place, that Sunday; it was on the New
4919 York shore that Sunday.

Q. Where she was tied up were there any boats at the dock that could chew her sides up, anything like that? A. No, not on this side.

Q. Were there any—there was not any ice drifting by there at any time on that slip? A. No.

Q. That slip was protected from the current? A. That was in off the front of the pier, like there was a bulkhead built in.

Q. It was a protection on the boat from anything drifting in the river? A. Yes.

Q. She could not get a side gouge by anything drifting with the current? A. No.

4920 Q. Did you make any report of this ice on Sunday to anybody? A. Why, no.

Q. Wasn't it your duty to report this ice? A. It wasn't necessary.

Q. Why not? A. That was up to the captain. He knew when he went across.

Q. Didn't you have instructions if there was ice to report it? A. What I mean to say is, there was no danger. When I came back I tied the boat up, but if there was ice in the river Monday

morning when he came in, that would be up to 4921
the man that took the boat across Monday.

Q. It was dark in the morning when he went out, wasn't it? A. Yes, sure; maybe it would be He left about 6:20, 6:10, whenever it was.

Q. In other words, there was not any rule about running in the ice or reporting it? A. I was instructed not to run if there was ice in the river, through Marty, that is, when Marty was running the boat, that is how I knew it.

Q. Marty wasn't running the boat this time, was he? A. No, he left.

Q. When had he left? A. I couldn't tell you 4922
how long that was when he left.

Q. Several months? A. I guess it was.

Q. Do you know why he left? A. No, I do not.

Q. Wasn't it over the boat?

Mr. Englar: Just a moment. The witness has said he does not know.

Mr. Axtell: I want to refresh his recollection.

Mr. Englar: I object to that. I submit you are taking advantage of the absence of the Court.

4923

Q. Do you know whether he had any difficulty about the boat, any arguments on that point? A. I think he had too many bosses, that was my idea of it.

Mr. Englar: I move to strike out the answer.

Q. You did not actually hear anything take place? A. No, I did not actually take anything.

4924 Q. All right. Were they using some kind of a siphon or pump on that boat for a while? A. Not in 1926. In 1925 I think we used a siphon one night.

Q. Well, Capt. Rohweder gave some rather definite testimony to the effect they were using a siphon.

Mr. Englar: Just a moment. I object to that on the ground that Capt. Rohweder made no such statement, except he said on one occasion when the bilge valve happened to be kicked open, the boat was siphoned out, on one occasion. He said on that one occasion this siphon was used, and that is all he said.

4925

Q. You do not know anything about that? A. I know if the bilge valve was kicked open she would take in water from the sea valve.

Q. Where was this bilge valve located? A. That was located on the side toward the stern of the boat. It would be on your right hand side, right behind the engine box.

Q. Was that repaired or changed at any time, 4926 to your knowledge? A. No, outside there was a T handle on to it to turn it on and off.

Q. Was that handle changed? A. It was not changed, but when we found out that that was the reason she would take in water through someone kicking the handle open, every man, for instance, had his own ideas about hanging the handle up or putting it away, so they could not kick it open.

Q. Didn't they put a new handle on it, a round handle? A. That was your sea valve. Your sea

valve had a wheel handle, that was underneath. 4927

Q. Was that altered or changed while you were running the boat? A. What, the sea valve?

Q. Yes. A. They put a new sea valve on once.

Q. While you were there? A. Yes.

Q. That used to get kicked open too? A. No, you could not touch that unless you lifted the floor boards up.

Q. I understood that Capt. Rohweder said the other valve got kicked open, and he changed that and put a new round handle on it. A. Not that I know; not while I operated her.

Q. There seems to be confusion about that. 4928
Was the steering gear in good order all the while you were running her? A. At times we would have trouble with the rope; it would break.

Q. Did you have any trouble with the rudder getting out of position? A. Not the rudder, but I had trouble with the shoe kicking off, the shoe that held the rudder.

Q. Do you know whether that was ever fixed while you were there? A. Oh, yes, it was once or twice.

Q. How recently before the accident? A. Oh, maybe about six or eight months, maybe, before the accident, it was repaired. 4929

Q. And did you ever notice when you had quite a few men standing in the cabin, and the seats were full, whether it made any difference whether the crowd was up in the front of the boat or stayed back? A. What do you mean?

Q. Did it make any difference in the operating of the boat, the way she would run? A. She would ride better if you carried your load in the stern.

4930 Q. Did you make some effort to keep them back there? A. Oh, yes.

Q. Did you observe whether or not when the cabin was entirely filled, I mean both aft of the engine and in front of it, and you had on a big load, 90 or 92 men, whether the bow came down a little more than at other times, I mean, that is proportionately, did it come down, or did it maintain the same position about when she had a full load as when she did not? A. Her bow would be down if you had a good load on; that is true.

Q. Of course, the whole boat would go down as
4931 you increased your load? A. Yes, absolutely.

Q. But the point I am more patricularly concerned with now is whether you noticed if you filled the space with men standing in front of the engine and back of the engine too, and having probably 90 or 92 men in there, if the bow went down any more in front than the boat did aft? A. No.

Q. If the boat went down evenly, or more in front than aft? A. She went down evenly on those occasions.

Q. You think so? A. I think so.

Q. How did the boat ride with a big load like
4932 that? A. She rode all right, unless the weather was rough, then you would have to take it slow.

Q. The waves would affect the boat some? A. The waves would affect it, and if you got right rough water, she would seem like she would take a nose dive if you drove her through the waves with a good load on.

Q. She would go down at the bow? A. She would really nose dive if you were driving her right along. She only done that once with me; as soon as you take the power off she stops that.

Q. Did she throw water on the deck? A. Once. 4933

Q. Did it come into the cabin or the cockpit? A. No; I pulled the clutch right out.

Q. You slowed up? A. I slowed up.

Q. How fast do you think you were going? A. I had her pretty well opened up, probably maybe 8 miles at that time.

Q. And how big were the waves? A. Well, it was pretty choppy.

Q. By that what do you mean? A. Well, I do not know just what height.

Q. You see, I do not know how limited your boat experience is, whether you have sailed boats elsewhere than the Hudson River or not. A. No, 4934
nowhere else. Good sized waves.

Q. Waves from bottom to top as high as the chair in front of you? A. You may have a wave this high from the floor (indicating).

Q. That is about 2 feet 6 inches, perhaps 2¼ feet? A. About that. If you hit a couple like that in succession, you know it had a tendency to go down by the head.

Q. That would scare you a bit? A. She would go down, nose dive. She did that once with me.

Q. And it scared you a little? A. It might scare me a little, but I remember the captain 4935
told me to take it easy on her.

Q. There are no ferryboats around this water much? A. No, not there.

Q. I suppose you get a wave from a tug or passing steamer once in a while? A. Oh, yes, in the summer time, then you would get your night boats.

Q. They would give you a pretty good roll? A. Yes, they would rock you a little.

Q. Did you ever have her out in any of those waves when there was a full load on? A. No; in

4936 the night we never carried a heavy load; probably 20 or 28 men in the night, maybe 35.

Q. Did she ever get in the trough of the sea, that is, lie lengthways to the trough of the sea, with a big load on? A. Why, no, not while I operated her, she was not. In fact, I always tried to keep her at an angle, so she would not get into the hollow of a wave, try to keep her at an angle.

Q. You were not certain what would happen? A. I never fancied to get into it.

Q. With a big load? A. No.

4937 Q. You considered it dangerous? A. I wouldn't advise it, anyhow.

Q. Did you consider it dangerous? A. Why, certainly.

Q. Did not you think you were carrying a pretty big load when you had 93 men on that boat? A. Why, no, I was never afraid with them. I always brought them over all right.

Q. Did you never say anything to the bosses about that? A. No.

Q. You thought that was all right? A. I thought it was all right.

Q. Did Marty Dinkel ever carry that many, to 4938 your knowledge? A. Why, I do not know if he did or not.

Q. Did you ever see any other man carry that big a load, as big a load as that? A. John carried as good a load as that.

Q. John who? A. John Rohweder.

Q. How long had he been doing that? A. I do not know whether he done it on how many trips he had, that would depend on how many men you had on a seed ship.

Q. Did you consider it important to get those

men over there when there was a seed ship waiting? A. It was up to us to get your men in on time. At 7 o'clock they started, and you had to get them over. 4039

Q. Who gave you orders to do that? A. Well, we had a regular scheduled trip for the morning to get the men over so they could get a job.

Q. Who was boss of unloading of the seed ships? A. At the dock?

Q. Yes. A. McHale.

Mr. Axtell: I guess that is all.

Cross examination by Mr. Englar: 4040

Q. Mr. Lang, I understand that regularly you only ran her at night? A. Regularly?

Q. Yes. A. But I used to take the morning trip quite often.

Q. I mean, that was not a regular thing? A. No, not outside of Sunday morning.

Q. And outside of Sunday morning, if you had to make the early morning trip, that was just if the day man did not happen to get there? A. Did not happen to get there.

Q. How often would that happen, once a month, or something of that matter? A. When 4041
John was there it happened quite often; sometimes four times a week.

Q. Sometimes four times a week? A. Yes.

Q. Isn't it a fact that when you had a seed ship in it was the custom to make two trips in the morning? A. Why, it wasn't the custom to.

Q. It was frequently done, wasn't it? A. It was done at times, yes.

Q. That is, when you expected a large number

4942 of men? A. If there was a large number of men, we would make two trips. We would tell the seed ship men to wait, and we would take the press men over there so they could get to work on time, and would come back and get the seed ship men.

Q. It was just a question of how many men there were? A. A question of how many men showed up on the seed ship. You could not say; you might get 20 men that would look for a job, and you might get only ten, and perhaps at times you would get 40 men looking for a job.

4943 Q. And when you found a large number of men looking for a job like that it was the usual thing to make an extra trip? A. If you thought it was too many, you would simply tell them you would be back for them.

Q. Do you know whether it was expected that an extra trip would be made on the morning of the 20th? A. I do not know positively.

Q. Had anything been said to you, or had you heard anything to indicate that there was to be an extra trip that morning? A. The only thing I heard was they expected a large crowd that morning; but I do not know whether they

4944 were going to make an extra trip or not.

Q. Did you expect they would or not? A. I wasn't there; I was starting up the plant when he went.

Q. About what time did he leave? A. I couldn't tell you just exactly what time he did leave, but he was there early that morning.

Q. Would you say that he left earlier than his usual schedule? A. Yes.

Q. And didn't that indicate to you that he was going to make an extra trip? A. Well, usually

on Monday mornings he would get in early, for the boat had been standing over Sunday, and he might want to fix it up. Sometimes it would be hard starting, and that was on a Monday morning. 4945

Q. When you had what you described as a big load, how many men do you think would be standing up? A. With the complete load?

Q. Yes, with these loads you said were big. A. Well, let us see.

Q. How many do you think would be standing up in the aisle? A. From the stern to the bow, you would have about maybe 45 to 50 men standing. 4946

Q. 45 to 50 standing? A. That is right up to the pilothouse.

Q. Including the men in the pilothouse? A. Yes; maybe you would have one man each side of you, two men in the pilothouse.

Q. Well, did you ever take a load when you thought the men were crowded the way they are in the rush hour in the subway or on the ferry-boats? A. Crowded that bad?

Q. Yes. A. Well, I do not know whether you would call them crowded that bad or not; they were pretty well jammed up. 4947

Q. You think that they were crowded then just as bad as you would find them in the subway in the rush hour or in the ferry? A. Yes; I guess they would be crowded that bad.

Q. Now, you never carried any big loads at night time? A. No, never.

Q. And the only time you have ever carried any such loads as you have described were when you substituted for the day man? A. Yes.

4948 Q. And you think you carried as much as 93 men? A. Right.

Q. Do you think it might have been 100? A. No, I would not say 100.

Q. Didn't Marty Dinkel ever tell you not to carry more men than you had life preservers? A. Yes; he has told me that already.

Q. Didn't you realize that you were violating your instructions if you carried any such number of men as you said? A. I was not instructed by the superintendent.

4949 Q. You said something about Sunday morning was the first morning you hit ice. Did you mean you actually hit any ice with the boat that morning? A. Why, yes, that morning we did hit ice on the New York shore when we were making our dock.

Q. Did you hit it hard? A. No; that was when we were making our landing; that was in toward shore.

Q. In the slip? A. In front of the slip and on the side of the slip.

Q. Do you think it did any damage to the boat? A. Why, no.

4950 Q. You are sure of that? A. Positive. You wouldn't drive the boat into the dock. When you were getting into the dock you would pull the clutch out and let it glide in.

Q. Now, when you figured that you were carrying 90-odd men, how many of them would be sitting down? A. Well, you would have about 40 or 45 sitting down.

Q. And about the same number standing up? A. About the same number standing up.

Q. In other words, there would be an equal number standing up— A. An equal number standing as sitting.

Q. Is this the statement that you made when you were in my office some time after this disaster? A. Right. 4951

Mr. Englar: I offer it in evidence.

Mr. Axtell: Have you any further questions in connection with this?

Mr. Englar: I do not think so.

Re-direct examination by Mr. Axtell:

Q. Do you know how long the seats in that boat were? A. Why, I do not; that is, they run from—— 4952

Q. I can tell you according to blue prints submitted in court by the company's attorneys, which I think are correct, they are about 25 feet; is that right, 25 feet?

Mr. Englar: I think that is about right.

Q. On each side there? A. Yes.

Q. Allowing 18 inches to a person to sit down, it would allow 36 people to sit down? A. Well, you could get that many in.

Q. Conceivably you could crowd in 40 men, if you had some small men? A. Yes. 4953

Q. I note in this statement here that is offered in evidence, and I am not objecting to it, that you stated that the capacity of the "Linseed King" was slightly more than 10 tons, and from 50 to 60 men could be seated on the fore and aft seats which ran the full length of the cabin on either side? A. I spoke about that after this statement was made; I was probably a little high in the seating of it; I did not know the length of them.

4954 Q. You knew she was 10 tons? A. I knew she was marked 10 tons.

Q. Did you dictate this statement yourself to the stenographer? A. To Mr. Hagen, and I think he had a stenographer there too.

Q. You did dictate it, or did Mr. Hagen? A. I did.

Q. Are you sure of that? A. Most of it.

Q. Wasn't it done this way, he would ask certain questions, and then you would answer, and then he would dictate to the stenographer and you would say yes, that is all right?

4955 Mr. Englar: I object to that. It is palpably leading and an attempt by Mr. Axtell to get his own witness to change the testimony that he has already given.

Q. I wish you would look it over, Mr. Lang, just read it carefully, and tell, after you have read it, whether that was your language, if you really dictated this or whether you told somebody some answers to questions and then somebody else dictated it, or if you remember? A. It is the same statement I made.

4956 Q. That is the statement? A. Yes.

Q. Is your recollection you sat down and dictated this without assistance? A. Why, no, not without any assistance at all.

Q. And your attention was directed to certain things? A. Absolutely.

Q. There is no question but what you signed this statement? A. I think I did sign it.

Q. Of course, that is your signature, isn't it? A. Yes.

Q. It is an affidavit sworn to, isn't it? A. I think so.

Q. You said you would not consider the boat was overloaded with 90 persons aboard, 90 men aboard? A. Absolutely; as I regard it it was not overloaded. If I thought that it was overloaded I would not have took them. 4957

Q. And you said that about 30 would have to stand up, and the crowd would be nothing compared with the crowd on ferryboats or in the subway; did you say that? A. I guess I did.

Q. And today you have said that you really think it was crowded like the subway? A. According to this statement there I stated that she would seat 50 to 60 men, which would give you 30 standing up. That is, if the boat would really seat 50 to 60 you wouldn't have any subway crowd standing up. 4958

Q. You know you did carry 90 at one time? A. Oh, yes, I am positive of that.

Q. You know that by counting them? A. Absolutely.

Q. As they went on or off? A. As they went off.

Q. Did not you count them as they went on? A. No.

Q. How did you know when you had enough? A. I used my own judgment. 4959

Q. In other words, when you could not get any more in? A. No, not that, but sometimes you would maybe have 60 men on there, maybe 70; you would not have 90 on every trip you made, or every day.

Q. Did you try to take them over, no matter how many there were? A. Not if there was too many.

Q. Of course, if you had over 100 waiting, you would not take them over, you would make an

4960 extra trip? A. Yes, naturally, then you would have to make two trips.

Q. There was no sign on this boat anywhere indicating her capacity of passengers, was there? A. No.

Q. How many she would carry? A. I never seen no sign.

Q. No notice up that you saw? A. No.

Q. Did you see any ice in the Hudson River the year before this? A. The year before the accident?

Q. Yes. A. Why, I did in January, February.

4961 Q. And was it as thick as this two-inch thick ice you said you saw? You said there was ice two inches thick this Sunday, but it did not cause you any trouble? A. Yes, that was the last Sunday that the trip was made.

Q. Witnesses in this case say that ice on that Sunday was much thicker than 2 inches; did you see any thicker?

Mr. Englar: I do not think they have said it was thicker than that on Sunday.

Q. I mean on Monday. A. On Monday; naturally the ice was thicker on Monday than it was

4962 on Sunday.

Q. The day following the accident? A. Yes, sir.

Q. That is all right. I was wondering whether you had observed the ice was only 2 inches thick, whether that might be slightly erroneous. A. Well, that is according to your eye; I did not measure it, or anything like that.

Q. That was your own guess? A. My own guess at it.

Q. How about the winter before, how thick was the ice in 1925? A. That is hard to say.

Mr. Englar: What time of the year are you talking about? 4963

Q. I am talking about December and January, before you laid the boat up. A. I do not think we had any ice the year before that in December. I think the boat was laid up at the end of December in that year, 1925, and I do not think we had any ice before that.

Q. Do you remember operating her in the ice at all the year before? A. No, sir.

Q. You do not remember seeing any when you ran her? A. What is that?

Q. You do not remember seeing any? A. No. 4964

Q. Did you say anything to Rohweder about ice in the river? A. No, I didn't see him that morning.

Q. Before that morning? A. No.

Q. You didn't report it to anybody? A. No.

Q. If Mr. Stover had been down there would you have mentioned it to him? A. I might have if I had thought of it when I went by him.

Q. You would not have considered it any part of your duty to do so? A. No, sir.

Q. Was this your dictation: "The boat was very strongly constructed, of one and one-half 4965
inch planking and heavy oak frames about two and one-half by three inches. She was very staunch, strong and tight and certainly had no leaks of any sort on Sunday, December 19th, when I made my trips and when I left her after completing my Sunday's work"? A. That is right.

Q. Is that your language: "She was very staunch, strong and tight"? A. Yes.

Q. You used that? A. Yes, sir.

4966 Q. I suppose you would be very much surprised if you found that same phraseology in a half dozen other affidavits that were made at the same time?

Mr. Englar: I object to this as cross examination of your own witness and an attempt to discredit him.

A. There is one thing, she was solid.

Q. Are those words you commonly use, "staunch, strong and tight"? A. You do not use them every day.

4967 Q. You are not a nautical man? A. What is that?

Q. You are not a mariner nor a marine lawyer, are you? A. No.

Mr. Axtell: That is all.

Re-cross examination by Mr. Englar:

Q. Mr. Lang, when you have operated this boat did you find her topheavy? A. Topheavy?

Q. Yes. A. No.

Q. She never seemed to show any tendency to
4968 capsize? A. Not to capsize. She would rock in the water like any boat would if you had rough water. I was never afraid she would capsize; in fact, I had more faith in her for that than anything else, because of the fact that you carried your load under water, that is, where your men would be sitting would be down into the water like, and it would have a tendency to hold her. The only thing you had on top was your pilot house.

By Mr. Axtell:

4969

Q. Did you have any instructions at all about how these life preservers were to be used for the people that were carried? A. What do you mean?

Q. Did you ever tell them what to do in case of fire or trouble? A. They knew what to do; you didn't need to tell them.

Q. Or how to get these windows open? They were supposed to be exits to get out? A. I do not know whether they put them in there for that or not.

Q. Didn't you notice they all opened inwards? A. They did.

4970

Q. Didn't you notice the back doors opened inwards too? A. Yes, sir.

Q. Did it occur to you that it would be very difficult for the people to get out of there if she suddenly struck something and filled with water? A. I did not fancy the windows in her.

Q. Did you ever say anything to anybody about that? A. No, I didn't.

Q. You were not there before they had put windows in her, were you? A. Yes, sir.

Q. Do you know whether they put that steam radiator in there afterwards? A. That was in before.

4971

Q. It was? A. Yes, sir.

Q. Do you know whether they planned to run this boat all winter or not? A. We never did run all winter.

Q. Do you know whether they planned to run her this winter or not? A. Not that I know of.

Q. You didn't receive any orders to lay her up? A. No; the day captain would lay her up usually.

4972 Q. If you hadn't received any orders to lay her up— A. No, I didn't receive any.

Q. Do you know who gave the order to lay her up the year before? A. I think Marty Dinkel did it that year; he came in one morning and he told Mr. Stover there was ice in the river and the boat would have to be laid up.

Q. You do not know who ordered her to be laid up? A. I do not know for sure who ordered her to be laid up.

Mr. Axtell: That is all.

4973 By Mr. Englar:

Q. Did a man named Klahre ever run that boat after you started to run her? A. Not after I started.

Q. Did he run her before? A. He might have run her in the day time if I was not there.

Q. He did not run her at night at any time after you were there? A. Not after I was there, no, sir.

By Mr. Axtell:

4974 Q. In case you were sick or were not there, who ran her at night? A. If I was not there, then Dressler would run her.

Q. You do not pretend to know what was done while you were not there? A. No, but I know Klahre did not run her nights; that I would be positive of.

Mr. Axtell: That is all.

Mr. Englar: That is all.

New York, January 30, 1928. 4975

(Met pursuant to adjournment at 10:30 A. M.; present as before.)

VIRGINIA SUMNER, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. Were you married? A. Yes, sir.

Q. You are a widow now? A. Yes, sir.

Q. Was your husband employed by Spencer Kellogg & Sons? A. He was. 4976

Q. When did you last see him alive? A. I last saw him alive on December 20, 1926, at six o'clock in the morning.

Q. Where did you live? A. 664 Gates Avenue, Brooklyn.

Q. Have you any children? A. One little girl.

Q. How large a man was your husband? A. My husband weighed 165 pounds.

Q. How tall, as tall as you are? A. He was taller than I was, about tall like you.

Mr. Axtell: About 5 feet 11. 4977

Q. What was you husband's first name? A. Fred Sumner.

Q. And that Gates Avenue address was correct? A. Yes.

Q. Have you found his body since then? A. No, I did not.

Q. You have never seen it? A. No.

Q. You never heard from him? A. No.

4978 Q. Were you happy at home, was your domestic life happy? Did you have trouble with him? A. No.

Q. He never left you or failed to support you? A. No.

Q. Did you get pay checks? A. I got two checks on the 24th at 7 o'clock at night, at my husband's sister's home. They came and brought me two pay checks.

Q. One for wages that he never earned? A. He worked three days.

Q. They paid you some money he did not earn?

4979 A. Yes, sir.

Q. They gave you some extra money? A. Yes, sir.

By the Court:

Q. How old was he? A. 27 on the 13th of December, 1926.

Cross examination by Mr. Matteson:

Q. What time did your husband leave home that morning? A. 6 o'clock.

4980 Q. Where do you live? A. I live at 664 Gates Avenue.

Q. Brooklyn? A. Yes, sir. He left in the morning, I did not exactly look at the clock, whether six or half past five. I know it was early in the morning he left. He had to make the boat at half past six.

Q. How heavy do you say he was? A. 165.

Q. What was his age? A. He was 27 on the 13th of December, 1926.

LEOLA TURNER, called as a witness on behalf of the claimants, being duly sworn, testified as follows: 4981

Direct examination by Mr. Axtell:

Q. Were you married to one Turner? A. Yes, sir.

Q. What was his first name? A. John Alexander Turner.

Q. Was he employed by the Spencer Kellogg Company? A. Yes, sir, for seven months; he never missed——

Q. When was the last time you saw him alive? A. December 20th at 5 o'clock. He always left home at 5 o'clock. 4982

Q. Where was your home? A. 1744 Atlantic Avenue, Brooklyn.

Q. Have you any children? A. One little girl and my niece I take care of.

Q. How tall a man was your husband? A. I think he was 5 feet 4.

Q. How much did he weigh? A. He weighed about 140.

Q. How old was he? A. 32 years old.

Q. Have you seen him since that time? A. Never since. 4983

Q. Has his body been found? A. Never been found—they had a body in Blackwell's Undertaking Parlor in Brooklyn of the description like my husband, but they had to bury his clothes.

Q. You did not see the body? A. No.

Q. You don't know whether it was him or not? A. No.

Q. It might have been? A. Yes, sir.

Q. The body was in the water a long time? A. Yes, sir.

4981 Q. Do you know where it was found? A. No.

Q. Did you receive any pay check from the company afterwards? A. One check.

Q. Do you remember the amount? A. $33.12, just for one week.

Q. You did not get any other money? A. No other.

Q. Was your domestic life home happy? A. A happy one.

Q. How long were you married? A. Six and a half years.

Q. He always lived with you? A. Always, never left me a day in my life.

4985 Q. He supported you? A. Yes, sir.

Q. He never had a reason for going away? A. No.

Q. He was going to work that morning? A. Yes, sir; he always left at 5 o'clock.

Q. Did you get an affidavit or a paper from Spencer Kellogg Sons in regard to collecting insurance? A. Yes, sir.

Q. Did you get the insurance? A. Yes, sir.

Q. On his life? A. Yes.

Mr. Matteson: I move to strike that out.

4986 I do not think it is of importance.

Mr. Axtell: You concede he was lost?

Mr. Matteson: We do not concede it because we do not know it. I do not think the question of whether they collected insurance——

The Court: It has no relevancy, except in so far as aiding in establishing the identity of a man who was in their employ, that is all.

Mr. Matteson: I do not think it would

even do that. That is a relation between them and some other company. I do not think that would be a matter of proof. 4987

Mr. Axtell: Will you admit you gave her an affidavit he was employed, and had not shown up since?

Mr. Matteson: Yes.

The Court: That is the only purpose of the testimony, and it will be considered only for that purpose.

No cross examination.

4988

ANNA MURPHY, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. Were you married to Andrew Murphy? A. Yes, sir.

Q. What is his middle name? A. Andrew Samuel.

Q. And you are his widow? A. Yes, sir.

Q. How long ago were you married? A. 16 years. 4989

Q. Whereabouts? A. In Ireland.

Q. How old was your husband? A. 41.

Q. How tall a man was he? A. Pretty near as tall as anybody.

Q. As tall as I am? A. Yes, sir.

Q. How much did he weigh? A. About 170 something.

Q. Did he ever work for Spencer Kellogg Sons? A. Yes, sir.

4990 Q. How long? A. I do not know; five months working, something like that.

Q. What did he do there? A. Just labor work.

Q. Working on the boats? A. Yes, sir.

Q. When was the last time you saw him alive? A. The morning when he died.

Q. What day was that? A. Monday morning.

Q. The 20th of December? A. Yes, sir.

Q. Last year? A. Yes, sir.

Q. Where was that you saw him? A. At home.

Q. Where is that? A. 503 West 19th Street.

Q. Did he ride on the boat the "Linseed King" mostly? A. Riding on the boat, yes.

4991 Q. He usually rode on the boat? A. Yes, sir. They got him three months and fourteen days after.

Q. Did they find his body? A. Yes, sir.

Q. Where? A. 86th Street.

Q. How long after the accident? A. Three months and fourteen days.

Q. What morgue did you see him in? A. Bellevue.

Q. You identified the body yourself? A. Yes, sir.

Q. Have you any children? A. One.

4992 Q. How old? A. He is 16; he will be 16 in July.

Q. Did you get a check for money from the company afterward? A. No, sir.

No cross examination.

JULIUS MARTIN, recalled: 4993

By Mr. Axtell:

Q. This is the badge you referred to in your testimony the other day? A. Yes, sir.

Q. Belonging to your father? A. Yes, sir.

Mr. Axtell: I offer that in evidence, together with a letter from Spencer Kellogg.

Q. That is the one you took off the body, isn't it? A. Yes, sir.

4994

Mr. Matteson: No objection.

(Marked Claimants' Exhibits FFF and GGG in evidence.)

No cross examination.

FILIPO DUETE, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell: 4995

Q. Did you go over on the "Linseed King" on the morning of December 20, 1926? A. Yes, sir.

Q. You were in the water with the rest of the men? A. Yes, sir.

Q. Did you ever file a claim? A. I can only speak a little English.

Miss Robinson: Yes, there is a claim filed.

4996 Q. Do you know Canadadio Rosa? A. Yes, sir.

Q. A Spanish fellow? A. Yes, sir.

Q. Was he on the boat that morning? A. Yes, sir.

Q. Did you ever work for the company before? A. Sure, I worked right along about seven months.

Q. Do you know the name of any other man on the boat that morning? A. Yes, sir.

Q. Who? A. Domingo Mesa, Eladio Martines, Juan Castro.

Q. John Castro? A. Yes, sir, Juan Castro.

Q. Who else? A. Juan—a Chilean fellow—Gon-
4997 zales, that is the name he gave me, and Juan Munoz.

Q. Which ones of those are alive now, any of them? A. Sure; I do not know their second name. The name is John, but I do not know the second name. I see this fellow's father, who is coming here now; this fellow coming down here. (Indicating Julius Martin.) I see his father.

Q. These men you mentioned, these four or five, are they living, any of them? A. No.

Q. Do you know whether their bodies were found? A. I see the fellow name Luis, the Chi-
4998 lean fellow, I do not know his name.

Q. He is the only one you saw alive? A. Yes, sir.

Q. How about the bodies, do you know whether the bodies of these other men were found? A. No.

Q. You don't know? A. I don't know the names.

Mr. Axtell: I shant question him about the accident, the number of people on the boat, or crowding. If you wish to make him your witness, go ahead.

Cross examination by Mr. Matteson:

Q. What nationality are you? A. Mexican.

Q. You fellows all have two names, don't you? A. Two names?

Q. Yes. A. Myself?

Q. Yes. A. No.

Q. Have you any other name? A. No.

Q. Don't you ever go by any other name? A. No.

Q. Some of these fellows had two names? A. Who?

Q. Didn't Canadadio Rosa have another name? A. I do not see any other name, only Canadadio Rosa.

Q. How about Domingo Mesa, did he have another name? A. No; I don't know.

Q. Do you know Eladio Martines had another name? A. Yes, I saw him two or three months only since I worked in Spencer Kellogg. He was before I am there. This is the name he gave to me.

Q. That is the only name you ever heard him use? A. Yes.

Q. Do you know any other name for John Castro? A. Yes, Juan.

Q. Any other name? A. Yes, sir, Munoz.

Q. Are Juan Munoz and John Castro, the same man? A. No, different.

Q. Did John Castro have another name besides Juan Castro? A. I do not know. This is the name I see.

Q. Do you know any other names for Gonzales? A. No.

Q. Do you know any other name for Munoz? A. No.

Q. Did you ever hear Gonzales use the name Navis? A. Navis?

5002 Q. Marcus Gonzales Navis, did you ever hear that name? A. I see him too. He did not work there at that time.

Q. You say he did not work there the time of the accident? A. No.

Q. You are sure of that? A. I ain't sure, but I did not see him there.

Q. How tall are you, do you know? A. About 5 feet 5 inches.

Q. How much do you weigh? A. I weigh about 175 pounds.

Q. What did Canadadio Rosa look like? A.
5003 Canadadio Rosa, shorter than me.

Q. Very much? A. Not much.

Q. About an inch or two shorter? A. Three inches, I guess.

Q. That would make him 5 feet 2 inches, wouldn't it? A. Yes, sir.

Q. What nationality was he? A. He said Chilean, that is what he said to me.

Q. How much did he weigh? A. I don't know.

Q. Did he weigh more or less than you? A. It looked like 160 or 165, something like that; I ain't sure.

Q. What did Domingo Mesa look like? A. He
5004 weighs about I guess 155 or 160.

Q. How tall was he? A. Taller than myself; about 5 feet 1 inch or 5 feet 2.

Q. How much? A. 5 feet 2 or 5 feet 1.

Q. You are 5 feet 5, you said? A. Yes, sir; he must be 5 feet 1 or 5 feet 2.

By the Court:

Q. Not as big as you are? A. No.

By Mr. Matteson:

Q. Shorter than you? A. Yes, sir, shorter than me. 5005

Q. What was he? Was he Chilean or Mexican, or what? A. Mexican.

Q. Eladio Martines, what was he? A. He was fatter than me. I guess he weighed about 180 pounds.

Q. How tall was he? A. More than me.

Q. How much? A. Not much; an inch or an inch and a half, something like that.

Q. What nationality was he? A. Mexican, too.

Q. What nationality was John Castro? A. 5006
Mexican.

Q. How big was he? A. He was very tall, about 6 feet 1 inch, something like that.

Q. How much did he weigh, do you know? A. I don't know. He was a skinny fellow, very tall.

Q. And Gonzales, was he a Mexican? A. No. He is a Spanish fellow, but he is not a Mexican. He looked like a Canadian fellow.

Q. Looked like a Canadian? A. Yes, sir.

Q. How tall was he? A. Tall—about like him there (indicating Mr. Hagen).

Q. How much did he weigh, do you know? A. 5007
I don't know.

Q. Juan Munoz, what was he? A. A little fellow. He weighed about 130 pounds.

Q. How tall was he? A. About 5 feet, something like that. He was very short, that guy.

Q. About 5 feet, you say? A. Yes, sir, something like that.

Q. What nationality was he? A. Mexican too.

Mr. Matteson: If your Honor please, we have a number of records here that it

5008 is difficult to check on short notice. I would like to have this witness excused and remain in the court room a little while until we check our records and see if there is anything else we want to ask him about.

The Court: All right. You stay in the court room, will you, please?

(Witness excused.)

5009 DOMINICK D'ARCO, recalled.

By Mr. Axtell:

Q. Did you know one William Cascaden? A. Yes, sir; he was a big fellow, got glasses on the eye.

Q. He worked there? A. Yes, sir.

Q. Was he on the boat? A. Yes, sir.

Q. Did you see him on the boat that morning? A. Yes, sir.

Q. Have you seen him since? A. No.

Q. Has his body been found? A. No.

5010 Q. You say he was a tall man? A. Yes, sir, he is a big fellow.

Q. A heavy man? A. Yes, sir.

Q. Do you know whether he had a wife or children? A. No. Somebody told me he has a family in Philadelphia. He checked——

Q. How long did he work there? A. This fellow; I don't know, five or six months.

Q. What did you say about check? A. He checked bags at the door.

Q. He lived in New York? A. Yes, sir.

Q. Rode on the boat every day? A. Every morning. 5011

Q. He was there that morning? A. Yes, sir.

Q. You have not seen him since? A. No.

Q. Did you see him in the water that day? A. No.

Q. You made an affidavit to the United States Veterans' Bureau, didn't you, for some of his relatives to collect insurance, didn't you?

Mr. Matteson: I object. I do not see that that makes any difference.

The Court: Sustained.

5012

Cross examination by Mr. Matteson:

Q. You have testified here before at this trial, haven't you? A. Yes, sir.

Q. You did not say anything about seeing Cascaden on board that time? A. Yes, sir, I see that fellow.

Q. You did not tell us that before?

Mr. Axtell: We will concede he was not asked anything about it.

Q. I want to read you from the record of your testimony before the District Attorney, and ask 5013 you whether this is right: "Q. Do you know of any men who were on the boat that have not been accounted for? A. No.

"Q. Any friends of yours who were drowned? A. No."

Did you answer that way to the District Attorney? A. Maybe yes and maybe no, because I do not understand good English.

Q. You made a statement to the District Attorney, didn't you?

5014 Mr. Axtell: We will concede he did.

Mr. Matteson: Will you concede I read correctly from his testimony?

Mr. Axtell: I have not read it, but I am sure you did, though.

(Witness excused.)

Mr. Axtell: There is a man, Vizcay, and this widow has called on me three or four times, and changed her address, and we cannot locate her, but from information she gave us, his body had not been recovered, and the claim is filed, but I have not been able to find her. I may be able to find her before the trial is over. Is one case I am positive about. I understand there is a widow of Johnson, whose body has not been recovered——

5015

The Court: Well, with these reservations do you rest?

Mr. Axtell: I have Mr. Simpson, owner of the "Doris" who will testify this is a photograph of the "Doris", if called.

5016

HERBERT SIMPSON, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Axtell:

Q. This is a picture of the "Doris"? A. Yes, sir.

Q. Is she steam or gasoline? A. Gasoline.

Q. Did she have ballast tanks? A. No, sir.

Q. That is as she has been for some time? A. Yes, sir, all the time. 5017

Q. What is the area of square feet in that boat, deck space? A. I do not know.

Mr. Axtell: I offer that in evidence.

(Marked Claimants' Exhibit HHH in evidence.)

Cross examination by Mr. Englar:

Q. Does this picture represent the boat as she is now? A. Yes, sir. 5018

Q. Have there been any changes in her in the last 4 or 5 years? A. No, sir.

Q. Can you tell me about the length of the enclosed cabin at the rear of the boat? A. I should judge about 45 feet.

Q. From the picture it would appear the cabin extends to just aft the midship, isn't that so? A. Yes, sir.

Q. It does not look to me as though it would be over 40 feet, what do you think? A. About 45, maybe 40.

Q. What sort of business is this boat used for? A. For excursion parties. 5019

Q. All-day excursions? A. Yes, sir.

Q. Do you ever go on her yourself when you take these parties? A. Yes, sir, I have been on her.

Q. Have you ever been on her when there was rain or bad weather? A. Yes, sir.

Q. Do the passengers all go in the cabin under those circumstances? A. Some go in the cabin and some forward. We have curtains forward we can put on her and drop down.

5020 Q. Isn't it a fact they fill up the cabin in bad weather? A. Some go in there, and then they can go out in front too.

Re-direct examination by Mr. Axtell:

Q. What kind of a thing is that cabin here, as he calls it? A. Glass windows.

Q. Big enough to get through? A. Why, yes, sir.

Q. Do you know the dimensions of them? A. No, sir.

5021 Q. You have a couple of lifeboats on there, haven't you? A. Yes, sir.

Re-cross examination by Mr. Englar:

Q. How do those windows operate, up and down? A. Yes, sir.

Q. Slide up and down? A. Yes, sir.

(Witness excused.)

Mr. Axtell: I guess we are all through, except one or two of these widows may stray in here this afternoon or this morning. We sent for them, but they have

5022 moved, you know.

ALBERT D. OSBORNE, called as a witness on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Englar:

Q. What is your occupation? A. I am an examiner of disputed handwriting; handwriting, ink, and so forth.

Q. Where is your office? A. 225 Broadway, 5023
New York City.

Q. How long have you been doing this work? A. The last 10 years.

Q. Have you devoted your entire time to it? A. I have.

Q. Have you made a study of handwriting, reading the leading books on the subject, examining the handwriting problem, and in fact, doing everything possible to qualify yourself for this kind of work? A. Yes, I have.

Q. Have you testified many times as an expert on this subject? A. Yes, sir.

Q. Have you had numerous cases for the New 5024
York District Attorney's office and for District Attorney's offices in this vicinity? A. Yes, sir, I had about eight cases for the New York District Attorney's office last year, and I think I have had cases for twelve District Attorneys' offices in this vicinity.

Q. How about the United States District Attorney's office here? A. I have appeared for them too.

Q. Have you also done work for the Army Department, and appeared for them? A. Yes, sir, I have had numerous cases for them. I appeared 5025
in New York at the Army and Navy Building, and also on Governor's Island, Fort Jay.

Q. Have you had cases outside of New York as well? A. I have.

Q. How many States have you testified in on this subject? A. I believe ten States now.

Q. Have you examined at my request the log-book of the steamer "Manisees", and particularly the entries with respect to ice, on Tuesday, December 14th, Wednesday, December 15th, and Fri-

5026 day, December 17th? A. Yes, sir, I made a careful examination of two pages in this book.

Q. Was page 138 one of them? A. Yes, 138 and 139.

Q. Now addressing yourself to the entries with respect to ice on the dates that I mentioned to you, namely, December 14th, December 15th and December 17th, will you state whether in your opinion the entries with respect to ice were made at the same time, with the same pen and with the same ink, or as a part of the same operation as the other entries under those dates?

5027

Mr. Jayne: I will object. That is including too many things in one question.

Mr. Englar: It does, but I thought I would ask one question.

Mr. Axtell: Let him answer.

Mr. Jayne: All right. Objection withdrawn.

A. On the dates December 14th, 15th and 17th, I do not believe the whole entry was written continuously. I think certain words were written at a different time than the beginning of the nota-
5028 tion, that is, on December 14th the words "First ice this month;" December 17th, "Heavy ice floes in N. R. caused by warm spell," and on December 17th, "Some ice."

Q. Will you state whether, in your opinion the entries you have read were made prior or subsequent to the other entries on those dates? A. I think by the position of them they were made subsequent. What I say is, I do not believe these words were written continuously with the rest of the notation of the dates. The actual date of the

adding of those words I cannot say. I also be- 5029
lieve on page 139 there have been certain additions.

Q. You need not go into those unless you are asked by the other side. With respect to these entries you mentioned about ice, would you say they were made with the same pen as the other entries under those dates? A. No. The most conclusive difference in my mind between those words and the rest of the entry is that the words I have mentioned referring to ice have been written with a very fine pointed pen, and I believe it is quite obvious the same pen was not used in the other 5030
writing on these dates. Some of the lines in the writing that refer to ice are very fine, showing the pen had a very fine point, and this is not the same as the rest of the writing under these different dates.

Q. Are there any other indications which might not be apparent to a person who has not made a study of the subject, and which influenced you in reaching the conclusion you have mentioned? A. The first difference, as I have said, is in the point of the pen, a very sharp pointed pen being used to write in these words, and there is a difference in the color of the ink. The words 5031
on the date December 14th, "First ice this winter" are in a bright blue ink, and the other, while a blue ink, is more of a grayish blue. There is a difference in the color of the ink, a difference in the pen point that was used, and also I think it is significant that while these words are the last written in in each of these notations, they have not been blotted, while the rest of the notations appear to have been blotted. For instance,

5032 on December 17, 1926, the word before the words "some ice" is the word "cold", and that word is lighter than the beginning of that notation, especially the last line, which would indicate a blotter was placed on this writing after the word "cold". Of course, the last word written is the wettest, so more ink is taken up by the blotter, but the last two words in the writing as it appears now are "Some ice", and those words, in my judgment, have not been blotted. If a whole line of writing is blotted, the last word should show the effect of the blotter more than the rest,
5033 because it is damper or wetter, but under date of December 17th the last words do not appear to have been blotted at all. I think the differences are obvious.

Q. Is there anything in the position of those words with reference to the other entries that supports your conclusion? A. It seems to me that it is a habit of this writer, perhaps not a consistent habit, of leaving a blank line between the notations of different days. Many times this line is not a blank, but there is a word put in at the right hand extremity of it.

Q. The right hand extremity? A. Yes, sir. For
5034 instance, on page 138 there is a blank line left between the dates December 12th and 13th, and December 13th and 14th, but then between December 14th and 15th, the words which appear to me to be different than the rest of the entries are written on the blank line, that is, I believe, the blank line was originally left between the entry of December 14th and December 15th; and the same is true in the next words I believe are added "heavy ice froze in N. R. caused by warm spell". They are written on what I believe was

a blank line left between the entry of December 15th and December 16th. The next words added "Some ice" on December 17th, there was enough room on the right hand side of the finish of what I believe was the original entry to put on these two words so they did not have to go in the blank line. 5035

Cross examination by Mr. Axtell:

Q. Is your father living, Mr. Osborne? A. Yes, sir.

Q. What is his specialty? A. The same thing.

Q. He is regarded as an authority, isn't he? A. He is cited about 15 times in Wigmore's New Edition. That is a good recommendation. 5036

Q. The differences you pointed out are perfectly obvious to anyone? A. It seems to me they are.

Q. You do not need to be an expert? A. No, I do not believe so.

Q. How do you account for the darker color of the ink on Sunday, December 26th; when was that written? A. I cannot say when they are written. I cannot say when these parts that were not written continuously with the rest were written. By the actual color of the ink writing like that I cannot say. 5037

Q. You notice this here under the entry of December 27th, "Towed Chenuck launch from Staten Island to Mill Rock, 3 hours". You notice some of the letters are much darker in that line than they are in the three lines before? A. Yes, I noticed that.

Q. More ink on the pen? A. Yes.

Q. It is quite obvious, of course, those lines were written at different dates, isn't it? A. No,

5038 it is not to me. You notice that is in the beginning of the notation where the person would put the pen in the ink.

Q. You are not being paid for giving an opinion on this part I asked about? A. I do not expect to be paid by you.

Q. Who usually testifies against you in these cases? A. I think I appeared in seven cases in a row where nobody did. In most cases there is no one on the other side.

Q. Do you know the names of other so-called experts? A. Yes, I can give you a list of them.

5039 Take the Red Book and you will find them.

Q. They are in the Telephone Red Book? A. Yes, sir.

HENRY EHRLICH, recalled in rebuttal, testified as follows:

Direct examination by Mr. Englar:

Q. You have testified before in this case? A. I did, sir.

Q. You are in the office of the Bureau of Navi-

5040 gation down here at the Custom House? A. Right.

Q. Have you brought with you the survey reports on the "Linseed King" which you had when you were here before? A. Yes, sir.

Q. May I see them, please?

(Witness produces same.)

Q. Now, the first of these survey reports was made on March 25, 1925, and what does that show? A. By Mr. Van Duzen?

Q. Yes. What does that show as to the height 5041
of the roof of the cabin above the main deck of the vessel? A. 3 feet 6.

Q. In a later survey, made on December 23, 1926, Mr. Van Duzen reported a greater height of the cabin? A. Yes, sir.

Q. And that greater height was how much? A. The difference, or the height itself? 5 feet is the full height.

Q. 5 feet is the full height in the later survey? A. Yes, sir.

Q. Has that survey of December 23, 1926, or any registration forwarded on it, been forwarded 5042
to or filed with the Bureau of Navigation at Washington? A. No, sir.

Q. And until that is done does the survey remain under the jurisdiction of the New York office here? A. Yes, sir.

Q. Since you last testified has the New York office made a further investigation of the measurements mentioned in the survey of December 23rd? A. Yes, on request of counsel for Spencer Kellogg.

Q. And as a result of that further investigation have you made any change in your record? A. Yes, we have discovered Mr. Van Duzen in one instance has made an error. 5043

Q. What instance was that? A. In the height of the cabin.

Q. What did you find was the correct height of the cabin? A. The original height of the cabin stated in the first measure.

Q. That is, there had been no change in the height of the cabin? A. In that one instance he had erred.

Q. Have you altered your records accordingly? A. We have altered the records and they will be placed on file.

5044 Q. With respect to including an enclosed space as a part of the tonnage is it a fact you do not include such space unless it is entirely enclosed? A. Unless enclosed, when closed in sea and weather.

Q. Suppose the two after windows in the cabin, that is, one on each side at the after end, had not had any glass in them— A. That is a matter of judgment. I would have included that cabin in the tonnage. If there were an objection on the part of the owner he would have to have the matter settled at Washington. The Commis-
5045 sioner of Navigation, he is the final authority.

Q. That is a sort of question on which the man making the measurement would use his own discretion? A. Yes, sir.

Q. So that as your records stand now the only change in this boat between the first and second measurement is the fact the cabin was enclosed instead of being open? A. Yes, sir.

Cross examination by Mr. Axtell:

Q. Was the pilothouse added? A. The pilothouse is exemptional. That is not——

5046 Q. It remains a fact this vessel was operating under a license that did not correctly give her tonnage at the time of the accident? A. Exactly.

Q. The difference was 7 tons? A. The difference between the first and second measure, before this last survey, difference in gross tonnage about 7 tons and a fraction.

Q. That is the last measurement? A. That is the measurement previous.

Q. What is it now? A. Gross, 16.25.

Q. And there is a difference of about 5 tons? A. Difference of 5 tons.

Re-direct examination by Mr. Englar: 5047

Q. What is the net now? A. Net 13.63.

Re-cross examination by Mr. Axtell:

Q. Is there a rule requiring license or inspection for a vessel over 15 tons? A. There is. That is not my department. I know there is a rule for carrying passengers for hire.

Q. Not if they do not carry passengers for hire? A. No, sir, no rule covering that.

5048

JAMES D. CARPENTER, JR., called as a witness on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Englar:

Q. What is your business or profession? A. Lawyer, practicing in Jersey City.

Q. You are a member of the Bar of the highest court of New Jersey? A. Yes, sir.

Q. How long have you been practicing in New Jersey? A. As an attorney-at-law since about the 1st of March, 1909, and counselor-at-law since 5049 the 1st of March, 1912.

Q. Have you brought with you a pamphlet containing the entire Workmen's Compensation Law of New Jersey as amended down through 1927? A. Yes, sir.

Mr. Jayne: I am going to object to this line. I object to the question as irrelevant.

The Court: I think I ought to receive it tentatively.

5050 Mr. Jayne: On the question of limitation, the boat can be limited, as to limitation and as to nothing else. The question as to whether these are Workmen's Compensation claims is irrelevant on the limitation proceeding.

Mr. Englar: I do not think anyone can speak so authoritatively on the law as Mr. Jayne.

Mr. Jayne: I am not speaking authoritatively on the law under the Workmen's Compensation Act.

5051 The Court: Inasmuch as there has been a good deal of discussion on that, especially by the Supreme Court of the United States, and as I have not the cases clearly in mind, perhaps I had better take it.

Mr. Axtell: The Supreme Court ruled on that point in the Lee case, the one under Section 33 of the Jones Act, as to whether or not that Act had repealed any part of the Liability Act. The Court held it had not. Therefore it follows the State Compensation Act could not affect it. It is maritime. I do not see where it has any

5052 bearing.

Mr. Englar: That is the next question.

Mr. Axtell: It might be received later. We have one issue, is this petitioner entitled to limit liability on the ground it had no privity of knowledge of the obvious unseaworthiness of this ship? That unseaworthiness was overloading. They cannot deny it. They admit it. There is no use of putting in any evidence here on that.

Mr. Englar: I understand this Court 5053
sitting in New York does not take judicial notice of the law of New Jersey. That is the reason I thought I ought to prove it.

The Court: Generally the United States Court can take judicial notice of all the laws of all the States.

Mr. Axtell: We concede that the Court may take judicial notice for the purpose of this case if it deems it important or material or relevant to the issues here, but we do not want to encumber the record with proof of those laws.

The Court: I am inclined to think the 5054
Court has power to take judicial notice of this New Jersey law, as well as all other laws of other States.

Mr. Englar: I am willing to join in that concession and agree the Court may look at the New Jersey decisions and may take judicial notice of them, but from my standpoint I would rather prove it on the record, and I do not insist my friend do so, but I am willing he can argue the cases and the Court can take judicial notice of it, but my impression is there is a 5055
good deal of doubt whether the Compensation Law is before this Court. I would rather prove it.

The Court: It may prolong the case. Counsel on the other side may call eminent counsel of Jersey to assert their contrary opinion and contrary assertions. I think I will sustain the objection.

Mr. Englar: Exception. May I at least without asking the witness to construe the

5056 law, may I get in a correct copy of the law?.

Mr. Axtell: Let it be marked for identification. We will concede the correctness of it and let it be marked for identification. Then the Court has the whole thing before it without reading and encumbering our record.

Mr. Englar: For the purpose of the record may it be understood that your Honor's ruling is made on the ground that the New Jersey law is before the Court,

5057 and not merely on the ground it is irrelevant?

The Court: Yes, that is the ruling, that this Court sitting, even in admiralty, has power to take judicial notice of the laws of the various States of the union, and especially the Workmen's Compensation Act of the State of New Jersey.

Mr. Englar: I am entirely satisfied with that. I was very doubtful about it myself. As I have this witness here I will have him identify the law exactly as it is.

5058 Q. What is this pamphlet? A. This is a pamphlet of the law published and circulated by the Department of Labor of the State of New Jersey in which the Workmen's Compensation Bureau is located, and they publish and put this out, and this is the latest compilation right up to date.

Q. The particular reason I want you to identify it, Mr. Carpenter, is I want you to point out any changes in the law since 1926; in other words, I want the Court to be able to identify the law exactly as it was in December, 1926. A. There

is one amendment, paragraph 17, page 35. It 5059
does not relate at all to the substance, but only to the procedure and certain fees under the Act.

Q. That is an amendment made since December, 1926? A. Yes, sir. March, I think, 1927. I think that is the only provision.

Q. What is the number of the paragraph? A. Paragraph 17 on page 35.

Q. Just that one paragraph, of Chapter what? A. Paragraph 17 of the Supplement to the Act known as Chapter 149 of the Laws of 1918.

Q. And with the exception of that one paragraph the law as shown in this pamphlet is as 5060
it stood in December, 1926? A. The amendment of March 27, 1927, I think that is the amendment mentioned on page 35—I am positive of it; but I would have to look at that Act.

Q. Will you look that up and check it? A. Yes, I will. I think that is the same amendment I checked on page 35.

Mr. Englar: I ask that be marked for identification.

(Marked Petitioner's Exhibit 19 for identification.) 5061

Mr. Englar: In view of your Honor's ruling, it is difficult with all amendments to find out what the law is at a given time. I understand that under the ruling of the Court and the concession of counsel, that the Court can look into not only different Statutes of New Jersey, but decisions construing that Statute.

The Court: Yes.

5062 Mr. Axtell: I never heard of a Judge being limited as to that. I submit that can be done on a memorandum of law, which has already been done.

(Witness excused.)

JOHN HERBEN, called as a witness on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Matteson:

5063 Q. Where are you employed? A. At the First Battalion, Naval Militia, State of New York, West 97th Street, North River.

Q. Employed at West 97th Street on board the "Training Ship Illinois"? A. Yes, sir.

Q. How long have you been employed on board that ship? A. Six years.

Q. Did you ever ride on the motorboat "Linseed King"? A. Yes, sir, I rode on her from the first time that she was built, when she was a new boat.

Q. Where do you live? A. 971 Second Place, North Bergen, New Jersey.

5064 Q. You live in New Jersey? A. Yes, sir.

Q. What was your custom with reference to riding on the "Linseed King"? A. We used to get the boat at Edgewater leaving the plant at twenty minutes after seven every morning, but Sunday, and used to get a boat a quarter after five every night at West 95th Street dock, coming back to New Jersey.

Q. How frequently did you do that during the six years you were working up there? A. Practically five days a week, morning and night.

Q. Do you remember the morning that this ac- 5065
cident occurred, December 20, 1926? A. Yes, sir.

Q. Did you come down to take the boat that morning? A. Yes, sir.

Q. What time did you get to Spencer Kellogg's plant, do you know? A. About ten minutes after seven.

Q. Was anyone else with you? A. Yes, sir.

Q. Who was that? A. Mr. Steinfatt. We always came down together.

Q. Who is Mr. Steinfatt? A. He works on the ship also.

Q. Did you find the boat when you came down 5066
there that morning? A. No, sir.

Q. What did you find ? A. We stood on the dock waiting for the boat, we did not expect to find her, she had been to New York, and she makes the trip from New York to Edgewater, and while standing on the dock I passed the remark to Mr. Steinfatt, "Oh, there is ice in the river."

Q. Do not tell the remarks you made. A. We stood on the dock there and saw two or three pieces of ice floating in the river.

Q. You did see ice that morning? A. Yes, sir.

Q. That was on the Jersey side? A. Yes, sir.

Q. In the vicinity of the pier where the "Linseed 5067
King" usually leaves? A. Yes, sir.

Q. How long did you wait there? A. I should judge maybe we waited there about 20 minutes.

Q. And what did you do then? A. Then we thought maybe the boat was a little late, and we waited for a while, and then somebody passed a remark, "Gee, something must have happened to the boat." We did not stay around there very long, we had to get to work by eight o'clock. We

5068 left the yard, went to the road, and took a bus to 125th Street Ferry.

Q. Did you come across on the ferry? A. Yes, sir.

Q. Did you see any ice in the river coming across on the ferry? A. There was a few pieces of ice, scattered pieces of ice, and as you got into the shore there was a little more ice.

Q. Which shore was there more ice on? A. The New York shore.

Q. Did the ferryboat have difficulty making the trip that morning? A. No, sir, you would not

5069 hardly notice the ice on the ferryboat.

Q. Had you seen any ice in the river before that morning? A. No, sir, that was the first morning we saw any ice in that part of the river.

Q. How many days during the week previous to the accident, the week ending December 18th, how many days do you think you rode on the boat during that week? A. We crossed on the boat that Saturday morning previous to that.

Q. You were on the boat Saturday? A. Yes, sir.

Q. How many trips did you make on her Saturday? A. Saturday morning and mid-day.

5070 Q. 7:20 from Edgewater? A. Yes, sir, and about a quarter after twelve, around that time, after 12 o'clock from 95th Street.

Q. Did you see any ice in the river Saturday? A. No.

Q. Any on the trips you made during the month, previous to that day, did you see ice in the river? A. That is the first ice I saw in the river that winter.

Q. On December 20th? A. Yes, sir.

Q. You are stationed on board the U. S. S. "Illinois"? A. Yes, sir. 5071

Q. And that is just a pier above 95th Street, where the "Linseed King" leaves? A. Two piers.

Q. In the course of your duties there do you have an opportunity to observe conditions in the river? A. Yes, sir, we are right on the river. We can see the river at all times.

Q. You have a good chance to see ice if there is any in the river? A. Yes, sir.

Q. Have you seen any ice in the river before December 20th? A. That is the first ice I saw down around that part of the river.

5072

Q. Did you pay any fare to ride on the "Linseed King"? A. No.

Q. That was a matter of accommodation, was it? A. Yes, sir.

Q. Now, did you ever ride on the "Linseed King" when a seed ship was in over at the plant? A. Yes, sir.

Q. And on the trips that you took would there be any of the men who were working on the seed ship on the boat? A. Yes, the night men would go over a quarter after five to go to work at six, and the night shift would be coming over in the morning.

5073

Q. When you were coming over in the morning the night shift would be coming to New York? A. Yes, sir.

Q. And when you went home nights the night shift would be going back to work in New Jersey? A. Yes, sir.

Q. On those occasions what would you say—what is your estimate of the largest number of people you ever saw carried on the "Linseed King"? A. My judgment, I did not count them,

5074 I do not believe there was ever over between 60 and 65 men on the boat.

Q. When there was no seed ship in would there be less than that? A. Oh, yes, quite a few less.

Q. And when there was a seed ship in you estimated there were 65 on board. Was there room enough for them to stand up and turn around all right? A. I always had room to stand up in the boat and move around.

Q. Were you ever apprehensive on account of crowding on the boat? A. No, sir, not at all.

Q. How much experience have you had with
5075 boats? A. I have been about 25 years on boats.

Q. Been following the water all that time? A. Yes, sir.

Q. Before you were on the "Illinois" what was your experience? A. I was assistant engineer on the "Joshua Lovett" for the Taylor Dredging Company, towing mud to sea.

Q. How long were you that? A. About two and a half years for the Taylor Dredging Company.

Q. Ever been to sea? A. Yes, sir.

Q. You are familiar with small boats and their operation, are you? A. Kind of.

5076 Q. Did you observe the captains, did you observe Mr. Dinkel and Mr. Rohweder in charge of this boat? A. Yes, sir.

Q. Were they competent men, in your judgment? A. Yes, sir, they were very competent men in regard to handling a small boat.

Cross examination by Mr. Axtell:

Q. Were you employed in any sense to help run the boat? A. No.

Q. Did you pay a fare? A. No, sir. 5077

Q. Were there any other people from the "Illinois" that rode on that boat? A. Yes, sir.

Q. How many? A. One more, Mr. Steinfatt.

Q. What is his position? A. He is an engineer on the "Illinois" also.

Q. Are you an engineer on the "Illinois"? A. Yes, sir.

Q. Who gave you permission to ride on the boat? A. Mr. Medlicot was the first manager of the Linseed plant that gave me permission to ride on the boat, and Mr. Stover, after he became manager.

5078

Q. Were there any other pedestrians or automobile riders that made use of this ferry? A. No, sir, not that I know of, and in fact I was not interested in anybody using it, only myself.

Q. In the beginning the boat was used principally for the office help, wasn't it? A. No, sir.

Q. You do not go back that far? A. Yes, sir, I go back to the time Spencer Kellogg owned the first "Linseed King."

Q. Did you ride on that too? A. Yes, sir, that was a Navy boat, a Navy hull.

Q. Perhaps it was even before that. I remember in the very beginning they used a boat for 5079
office help principally. A. I do not remember that. Since I rode it was used for everybody leaving New York for the plant.

Q. Did you see early in the morning the men who would come to answer an ad on the dock in New York City? A. Yes, sir.

Q. Did you get over as early as that, or did you live on the ship? A. I used to be on every fourth night, and I always made the trip that

5080 morning, and I made the trip the next night to go home.

Q. You saw men waiting on the dock to go across? A. Yes, sir.

Q. Sometimes quite a lot? A. There was quite a few.

Q. A couple of loads? A. I could not judge about that, because there is a lot of men hanging around that dock; they used to be coal passers and coal shovelers for Burns Brothers.

Q. You have seen her go away with a load, leaving men on the dock? A. Yes, sir.

Q. On the New York side? A. Yes, sir.

5081 Q. Did you ever see them go away on the Jersey side leaving men on the dock? A. Yes, sir, I heard the capain tell them to "Wait, I am going to make another trip."

Q. What captain was that? A. Both captains; Mr. Dinkel was one man and the other men that was on the boat. I do not know them all by name.

Q. Did you know these other captains, Capt. Brown, did you know him? A. Yes, sir, I know Capt. Brown quite a while.

Q. I suppose he was a competent man too? A.

5082. I do not know about that.

Q. He knew how to run the boat? A. He might know how to run the boat, but not hurting Mr. Brown any, he liked his drink too.

Q. He was operating the boat sometimes while he was intoxicated? A. I never saw him operate the boat intoxicated.

Q. You mean when he is away from his business he liked his drink? A. Yes, sir.

Q. Did you like yours too? A. No, sir.

Q. Weren't you with him when he was drinking? A. No.

Q. You saw him lying down drunk some place, 5083
I suppose? A. He did not have to be lying down.

Q. You saw him under the influence of drink when not working? A. Yes, sir.

Q. Where was that? A. At Shadyside.

Q. Whereabouts? A. Shadyside is only a place a couple of blocks long.

Q. Where? A. John Killis' Saloon.

Q. You were in the saloon? A. No, I was not in the saloon.

Q. How did you see him if you were not in the saloon? A. (No answer.)

Q. How about the night electrician who was 5084
running the boat so long, Fred Lang, was he a competent man? A. Yes, sir, he was all right. I did not see him very much.

Q. You do not know that was the only boat he ever operated? A. No sir; he did not operate it in the day when I was on her.

Q. How about Sullivan, was he competent? A. Yes, sir, he was competent to run her while the other captain was sick.

Q. Although he never ran a boat in his life? A. I don't know.

Q. How about Dressler, was he a competent man? A. He operated the boat all right. 5085

Q. He was competent? A. Yes, sir.

Q. These men are all honest? A. As far as I know, they are.

Q. I show you this picture, and ask you if that is the way the Hudson River looked on the 20th of December, 1926? A. No, sir, it did not look that way down around the "U. S. S. Illinois."

Mr. Axtell: Referring to Exhibit E.

5086 Q. There was a lot of ice in the Hudson River that winter, wasn't there? A. That ice I saw was the first ice in the river that winter up till that day, the 20th of December.

Q. Did you have any particular occasion to be looking for ice? A. We crossed the river, and we are right on the river. We would have to go over a gangway, which is about 40 feet long between the ship and the dock, and there is water in between, and naturally if there is ice there will be ice in between there, and I did not notice anything in there previous to that.

5087 The Court: When was that picture taken?

Mr. Axtell: The 20th, the same day.

Mr. Matteson: At 254th Street, Riverdale.

Q. Did you ever ride over with the morning shift from New York to New Jersey when they had a seed ship in? A. No, sir.

Q. How many people do you think there were standing up these trips you came over? A. I should judge maybe around 30 people, roughly.

Q. About 30? A. Yes, sir.

5088 Q. And how many sitting down? A. There might have been maybe 30 sitting down. I do not know how many could sit down. Some would occupy more room than others, spread themselves out, and some of the fellows would start to fall asleep with working nights.

Q. How long was the cabin, do you know? A. No, sir, I have no idea.

Q. Did she have a pretty snug load when she had 65 on? A. You could move around on the boat.

Q. You could not all of you get on life pre- 5089
servers like this and get out of the door with them on, with 65 on there, could you? A. I could put one on. I do not know how many others in the boat knew how. Lots of people could not put one on alone.

Q. You would go outside and jump on it, wouldn't you? A. If I could not get out any other way I might use it that way, yes, sir.

Q. Did you ever stop to think what would happen if the boat struck something and filled with water, if all those 65 people started to get out of those two doors at once? A. No, sir. 5090

Mr. Matteson: I do not think this is cross-examination.

The Court: Sustained.

Mr. Axtell: I will make him my witness on that point if it is not cross-examination. He has been going to sea a good many years.

A. Yes.

Q. Did you ever think about it? A. Why, no, I never gave it a thought.

Q. You never did. Nobody thought about it. 5091
Just visualize that boat with glass cabin windows all opening in, back exit opening in and two doors in front 22 inches wide opening out, with 65 people in there, the cabin 25 feet long, with 16 or 18 men on each side sitting down, and I suppose some of the men aft of the engine, weren't there? A. They used to be.

Q. You used to get more aft than in front? A. No, there was not enough space aft of the engine.

Q. Did you have that filled up, aft of the en-

5092 gine, with 65? A. They used to be a few sitting there on the bench.

Q. How many would you have standing back of the engine? A. Maybe 5.

Q. 5 or 6? A. Yes, sir.

Q. Would that fill it up pretty good? A. No, there was room there to get out through the door.

Q. If you could get the door open? A. There was no trouble getting it open.

Q. Don't you know it was kept locked so they could not come in from both ends? A. No. I saw the door opened lots of times.

5093 Q. How many did you have forward of the engine? A. I don't know; maybe 25.

Q. 25 in front of the engine, and 5 aft of it? A. About that.

Q. Have you been talking this over with somebody, about the number in this boat? A. No, sir, I never talked it over.

Q. Not at all? A. No.

Q. You did not talk with the lawyers? A. No, sir; I am stating my own experience about the boat.

Q. You were just subpoenaed here? A. No.

Q. You came here without subpoena? A. I was

5094 asked to come.

Q. You did not talk it over with the person who asked you to come? A. No.

Q. You did not know of the questions you would be asked? A. No.

Q. Nothing about how long ice was in the river? A. No.

Q. You have not signed a statement? A. No.

Q. And your recollection is based on your memory? A. My memory.

Q. You have a good memory about the space in the cabin? A. Yes, sir. 5095

Q. With 25 people standing forward of the engine, you had the space pretty well filled, didn't you? A. You had room, you could move around. I do not know what you mean by filled up.

Q. Assuming there is 48 square feet, free space, exclusive of the men sitting down, allowing two square feet per man for those sitting on the seats, which is about as little as you can get a man into, I guess, and that you had 48 square feet with 25 men standing in it in front of the engine, that would be about 1⅓ square feet per man, wouldn't it? A. Yes, sir. 5096

Q. Do you say in your 30 years' experience a man could put on a life preserver and get out of the door in such a space, considering all these men sitting on the seats are going to get up?

Mr. Matteson: I think that is misleading, to ring in imperfect mathematics on a man. That is practically 2 feet.

Mr. Axtell: Whatever it is.

Q. Do you think they could all get out? A. Yes, sir, if they went out in a proper manner they could get out. I do not claim 4 or 5 could get through the door at one time. 5097

Q. Did you ever notice how the captain handled his lines when he ran the boat all alone? A. No, I never did, because lots of times I put the line out for the captain.

Q. It needed a deckhand? A. Not necessarily.

Q. You would not think of running that boat with such a load for the United States Government without a man to help you, would you? A. Not in the Navy Department, they don't.

5098 Q. Nor for any private owner, would you? A. I have seen other men run them. Dudley runs a boat up and down the river without a deckhand, by himself.

Q. Who does? A. Capt. Dudley.

Q. Does he carry as many people on a boat of this size with a glass cabin? A. I believe he did.

Q. Give me the name of the boat? A. The "Francis."

Q. Where is he at? A. I believe he is at Edgewater. He used to be at 110th Street, North River.

5099 Q. Did he carry passengers for hire? A. He used to carry people to the Edison Electric Company, yes, sir.

Q. What kind of a boat was it? A. A kerosene engine.

Q. An open boat or cabin boat? A. An open boat with top.

Q. No windows inside? A. No, sir; curtains.

Q. How long is the boat? A. About 35 feet, I should judge.

Q. That is not as big as this boat, is it? A. No, sir.

Q. And you say she could carry a couple of
5100 hundred or so? A. I did not say any such a thing. I did not mention any number.

Cross examination by Mr. Jayne:

Q. These 65 you observed was on the trips you were on her? A. Yes, sir.

Q. Did you ever notice there were not as many men working around that plant at night as in the day time? A. I did not notice the plant in the day time. The night shift used to come at

a quarter after five to go to work on the night shift. 5101

Q. You did not notice whether there were more or less men at night? A. No.

Q. This morning of the accident there was a seed ship in? A. Yes.

Q. How many men were standing on the pier with you waiting for the boat? A. With me?

Q. Yes. A. There was only Mr. Steinfatt and myself.

Q. There was a night shift working, we have been told here, and you said there was a seed ship in? A. Yes, sir.

Q. You did not see any other men? A. I did not see any. There might have been one or two walking around; there was not enough men to draw attention. 5102

Q. That was usually the situation when you went over in the boat, wasn't it? A. No, sir; there used to be press men and other men who worked on the ship.

Q. Where were they this morning? A. I don't know.

Q. Did you ever count the men coming off this boat? A. No, sir.

Q. Did you ever see them come over on the first trip in the morning? A. No, sir. 5103

Q. You were going to see them that morning where you were standing? A. I would have.

Q. You came over other mornings the same way, didn't you? A. I went from Jersey to New York.

Q. When you went over other mornings the first boat came in? A. No, the boat would be in mornings when I got there, unless the mornings

5104 maybe he might be late making his first trip, then we would see him come in.

Q. You say all you saw in the river this morning was two or three pieces of ice floating by? A. I mentioned two or three pieces in Edgewater.

Q. I mean the river; did you see more than two or three pieces floating down the river at that dock? A. No, not at that dock.

Q. In the river all you saw was two or three pieces? A. There was more on the New York shore.

Q. Could you see it? A. Not from Jersey.

5105 Q. Was it light or dark? A. It was kind of snow ice.

Q. Was it the time of day, the time of day, when it was light or dark? A. Light.

Q. You could not see the ice on the New York shore? A. Not from Edgewater, I could not.

Q. You say that ice was there on the New York shore? A. When we got over there there was ice on the New York shore, yes, sir.

Q. You did not see any ice there that day in the river that looked like that ? A. No, not that looked like that around our ship, or at 96th Street.

5106

Mr. Matteson: Referring to Exhibit CC.

Q. When you were down there you did not see men standing on pieces of ice in the river? A. No.

Q. Not a man? A. No.

Q. Nor a piece of ice for a man to stand on; there was not a piece of ice that big? A. There might have been a piece of ice as big as that desk.

Q. What were the sizes of the three pieces you saw? A. About as big as the desk.

Q. I want to understand from you, do you say before you came here and took this stand you did not talk with anybody about what you knew about this accident, or about this boat, that you did not talk with anybody from the lawyer's office, or from Spencer & Kellogg Company, about what you knew about this river this morning, or the ice, or the boat? A. I did not. 5107

Q. You did not talk to a soul? A. No.

Q. Nobody asked you a question about it? A. They asked me could I recall ice was in the river, and I told them the same as I told you, that is all.

Q. That is talking about it? A. Yes, sir. 5108

Q. Did they ask you about the boat at all? A. No.

Q. When you say they asked you, who did this? A. I cannot mention the name.

Q. Do you see them here in the court room? A. Yes, sir.

Q. Who was it? A. This gentleman (indicating Mr. Matteson).

Q. He talked to you about the boat? A. He talked to me about that morning, ice——

Q. Did he ask you how many people were on the boat? A. How many I thought. 5109

Q. And you told him? A. What I thought.

Q. Why did you say you have not talked to anybody? A. You asked me if I signed anything.

Q. I did not ask you if you signed anything. Both me and the other lawyer asked you if you talked to anybody about this. Why did you say you did not? A. (No answer.)

Q. Did you think that would help Spencer Kellogg's case if you said you did not? A. No, I am not here defending on either side of the case.

5110 By the Court:

Q. Did you understand counsel on the other side when he asked you if you talked to anybody about it? A. I understood him if I signed any affidavit or anything.

By Mr. Axtell:

Q. Did you ride on the boat Sunday? A. The Sunday previous, no, sir.

Re-direct examination by Mr. Matteson:

5111

Q. You say you have seen men left on the dock by the captain, who said he would be back and make another trip? A. Yes, sir.

Q. Did that happen on both sides of the river, or only one side? A. I have seen it happen on both sides of the river when he said he would be back and make another trip.

Q. And leave men on the dock? A. Yes, sir.

Q. This ice you saw on the 20th, can you give us any idea of the thickness of the ice? A. What I saw roughly looked I judge maybe one and a

5112 half inch thick or one and one-quarter inch thick, something like that.

Q. You talked with me at the office about the ice conditions, is that right? A. Yes, sir.

Q. And all these questions Mr. Axtell asked you about life preservers and getting out of the boat are things you have never been asked about, is that right? A. No, sir.

(Witness excused.)

HENRY STEINFATT, called as a witness on behalf of the petitioner, in rebuttal, being duly sworn, 5113
testified as follows:

Direct examination by Mr. Matteson:

Q. What is your employment? A. I am employed as engineer on the U. S. S. "Illinois".

Q. With Mr. Herben, who testified here? A. Yes, sir.

Q. How long have you been connected with the Naval Training Ship? A. It is around 23 years.

Q. How long has that ship been up at 95th Street, have you any idea? A. I think about 8 5114
years.

Q. Did you ever travel on the launch "Linseed King"? A. Yes, sir.

Q. Did you ever pay any fare when you traveled on the launch? A. No, sir.

Q. A matter of courtesy with the company, was it? A. Yes, sir.

Q. How long have you been traveling on the launch "Linseed King"? A. This particular boat?

Q. Yes. A. Ever since they have the boat, whatever that is; I judge 4 years.

Q. Did you travel on the old "Linseed King" 5115
before they built this one? A. Yes, sir.

Q. Did you come down to take the trip on the "Linseed King" on the morning of December 20th? A. Yes, sir.

Q. Do you live in New Jersey too? A. Yes, sir.

Q. You came down to Edgewater then? A. Yes, sir.

Q. What time did you get down there? A. We used to make the 7:20 trip; that would bring us down at 7:10 in the morning.

5116 Q. When you got down there that morning did you notice anything out of the ordinary? A. We noticed the boat was not there, but it happened sometimes the boat made two trips in the morning and would not be there, so we waited around for the boat to come in.

Q. What conditions did you observe in the river that time? A. We noticed a few pieces of ice around the surface of the water.

Q. That was in the vicinity of the pier there at Edgewater? A. Yes, sir.

Q. Could you see whether there was other ice
5117 in the river further away? A. You could not see; the vision was not so very good, if I remember correctly. It was a little dark at 7 o'clock in the morning at that time of the year.

Q. How long did you wait there for the boat? A. I do not know; it could not have been very long. It might have been half an hour, but no longer.

Q. What did you do then? A. We conversed with several men, wondering what kept the boat, and if I remember correctly, we heard they launched a lifeboat off the seed ship to go out and pick a launch up. We did not get any information
5118 that it was the "Linseed King" that was sunk, but anyway, we decided to go around the other way.

Q. You went by way of the ferry? A. We went on the road, got the bus and went on the ferry.

Q. When you went across on the ferry did you see ice in the river that time? A. Yes, a few pieces.

Q. More on one side than the other? A. It was packed pretty good on the New York shore.

It seemed the wind blew it in toward the New York shore.

Q. Was there some on the Jersey side? A. Not much. I would say in a scattered condition, a little piece here and a little piece there.

Q. How frequently had you ridden on the "Linseed King" during the month just before this morning when the accident occurred? A. If my memory serves me right, that is the only means we had to get across. We used to use that means to go across.

Q. Every day? A. Every day, morning, and every evening.

Q. Your usual procedure was to leave New Jersey at what time? A. On the 7:20 trip in the morning.

Q. And go back at night? A. 5:20 or 5:25.

Q. Did you make the trips on Saturday? A. Saturday morning and Saturday noon trip.

Q. Did you see any ice in the river any time previous to December 20, 1926? A. No, I do not remember that we did.

Q. That was the first that you had seen? A. Yes, sir.

Q. In the course of your duties as engineer on the "U. S. S. Illinois" did you have an opportunity to observe the conditions in the river from the position where she was made fast? A. Yes; it is in fact part of our duty to observe that. We have floating equipment there, and water mains with drains going overboard which naturally draws our attention to the condition in the river.

Q. Had you seen ice in the river prior to December 20, 1926? A. No.

Q. These trips that you made on the "Linseed King" during these years previous to the day of

5122 the accident, did you ever ride there when there were men from the seed ship riding on her? A. Yes, sir.

Q. When was that? A. Whenever there was a ship in and unloading, that used to be quite frequent.

Q. When would you run into that load? A. When they were working the ship nights they would pick up the crew, the working men in the evening, and the mornings, some would be coming back, that was on the morning trip.

Q. What would you say was the largest number
5123 you ever saw carried on this boat? A. I do not know. You see, it is very confusing to count a lot of men, but I always thought about 60; between 55 and 60.

Q. Did you ever see it so crowded on board the boat a man could not raise his hands from his side, or put them down if he had them over his head in there? A. No.

Q. Or could not turn around? A. I think there is always room enough to turn around, no matter how bad the crowd is.

Q. Did you ever see anybody left on the dock by the captain? A. Yes, sir, I have heard the cap-
5124 tain give orders to wait until the next trip. They would make two trips in the morning. If they expected many they would stay and wait until the next trip. That is why, when we were there and the boat was not in, we thought she was making an extra trip.

Cross examination by Mr. Axtell:

Q. You apparently thought that boat had a limit as to how many she could carry? A. I thought so, yes, sir.

Q. Do you remember when they put on the glass cabin? A. Yes, sir. 5125

Q. It made it more comfortable, didn't it? A. Well, yes.

Q. Do you ride over to this ferry from your house in a car or an automobile? A. Do I? Several times I went across the ferry in my automobile.

Q. You had your own car to drive to the Spencer plant? A. No, I walked.

Q. How did you get to the Spencer plant? A. Walked from my home to the plant.

Q. Do you live near the plant? A. It is about 20 minutes' walk, I judge two miles. 5126

Q. You did not drive down? A. No.

Q. And you did not come with this other gentleman who testified? A. We always traveled together.

Q. You both walked down? A. Yes, sir.

Q. You did not drive your car down? A. No.

Q. You never did? A. No.

Q. Did you ever drive your car there and park it? A. From our home to the plant?

Q. Yes. A. No.

Q. You always walked two miles? A. Yes, and walked home. 5127

Q. Did you ever give a fellow a lift when you were riding around the country? A. Did I?

Q. Yes. A. Sometimes. I am careful who I give lifts to.

Q. Did you feel that fellow was under obligation to you if you gave him a ride for two miles? A. I don't know; I don't think so.

Q. How do you feel about Spencer Kellogg Company after riding on their boat without paying fares for eight or nine years, do you feel under obligation? A. No.

5128 Q. You think you have discharged that obligation this morning? A. No, I do not think so. That did not occur to me at all.

Q. It would have been very inconvenient for you to ride around on that ferry every morning—to ride on the public ferry? A. I don't know.

Q. Why didn't you ride that way? A. Because I choose to go this way.

Q. Why did you choose to go this way? A. Just a matter of form, that is all, a change.

Q. It was more convenient, wasn't it? A. I would not say that.

5129 Q. It saved you time? A. It had saved a little time and also got us out of the crowded conditions going the other way.

Q. Crowded on the other ferryboat? A. Yes, sir.

Q. This was elite, this made you feel more elite, riding on a yacht across the Hudson River?

The Court: I do not think that is necessary.

Q. Isn't that so, you felt as though you were getting out of the mob?

5130

The Court: He already said that.

Q. I suppose if you knew there was ice in the river you would not ride in that boat, would you, you would not ride with ice in the river? A. Yes, I would, if conditions were not too bad.

Q. You did not think it dangerous to ride in ice? A. I understand the conditions of boats and when ice is bad enough I know enough when to stop riding. I have had enough to do with boats.

Q. You never noticed her having difficulty with ice on previous occasions? A. No. 5131

Q. The winter before that she did not sink or break any holes in her, did she? A. No; they hauled her out.

Q. They ran when there was some ice in the river? A. They did not wait too long.

Q. They went with ice in the river? A. If I remember, when it got bad they hauled her out.

Q. You remember seeing ice in the river when you rode in that boat, don't you? A. Yes, a little.

Q. And you remember the year before that too, don't you, 1923? A. 1923. I think they hauled the boat out before there was any ice. 5132

Q. Mr. Medlicot always hauled the boat out before there was ice, didn't he? A. No, he did not.

Q. How many times did he run her with ice in the river? A. Here is the condition with the ice question in New York Harbor. If there is a thaw after a bad spell, and there is a thaw, ice breaks up and it comes down, and the river is flooded over night, and you might have clear conditions a week before that.

Q. You cannot tell when you will have that? A. No. 5133

Q. And if a boat is not fit to run in the ice, she should be laid up before there is danger? A. If a boat is not fit to run she should be hauled out.

Q. This boat was not fit to run, was she? A. She was fit.

Q. In ice? A. Not in ice, not in bad conditions.

Re-direct examination by Mr. Matteson:

Q. You say if there is some ice it can be run? A. Yes.

5134 Q. You have to be careful? A. A good competent man can tell whether it is dangerous to run a boat or not.

Q. Mr. Steinfatt, I did not quite understand your answer to one question. I wish you would tell us. If this boat was ever run on any previous occasion in any previous year when there was ice in the river, tell us just what you mean by that? A. The ice conditions were not bad enough to warrant hauling her out. That is what I meant by that.

Q. You say frequently big floes will come down the river. Is it also true that that ice disappears, 5135 and you will have a clear river for some time after that? A. No, not if the thawing condition continues.

Q. But if it does not? A. If it does not; then it will disappear.

Q. Can you give us any idea how thick the ice was you saw on the morning of the 20th? A. That is pretty hard to tell. It looked to me as if it was thin ice being it only had a day or two in the making of it. I do not think it was fresh water ice from up the river, because that is thick. This was not thick ice.

5136

Re-cross examination by Mr. Axtell:

Q. Does $250 mean anything to you? A. That all depends.

Q. If I made you a present of $250 and you accepted it—— A. For what?

Q. (Continuing) Would you feel you were under some obligation to me? A. I would not accept $250 from nobody unless I worked for it.

Q. You would not? A. No.

Q. Do you realize you have accepted $250 from 5137
Spencer Kellogg Sons for the free rides you had in the last eight years, according to your testimony? A. No, I do not realize it.

Re-direct examination by Mr. Matteson:

Q. You used to have a little boat of your own you ran across in? A. Yes, sir.

Q. And when they offered to take you you laid that up? A. Yes, sir.

FRANK A. CHRISLER, called as a witness on be- 5138
half of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Matteson:

Q. What is your position? A. Night assistant tug dispatcher.

Q. For the New York Central Railroad Company? A. Yes, sir.

Q. Is that at their terminal at 59th Street—72nd Street, North River? A. Yes, sir.

Q. Where is your office there? A. On the end of Dock G. 5139

Q. What is your duty as tug dispatcher? A. To receive and give orders for tugboats, barges. We keep a record of everything that is moving.

Q. You keep a record of all movements of the vessels there? A. Yes, sir.

Q. Do you also in that regard enter anything about weather conditions? A. Every four hours.

Q. Every four hours you make an entry about that? A. Yes, sir.

[illegible] Street.

[illegible] in the vicinity [illegible] make an entry there?

[illegible] a register.

Q. What do you register there? A. We it takes a longer time than usual to do the work, and we have to give them another hour to help them?

Q. Do you use them in the first bridges? A. In all first bridges and taking them out, and bigger also.

Q. Is this book I have in my hand one of the records you kept up there? A. Yes, sir.

Q. Who makes the entries in this book? A. I do, from 12 to 8—from 11 to 7.

Q. You make the entries from 11 to 7? A. Yes, sir.

Q. At the night time? A. Yes, sir.

Q. And the other entries are made by the day man? A. By the day shift.

Q. Is this a record kept in the regular course of your business up there? A. Yes, sir.

Q. This record contains the record for the month of December, 1905, does it not? A. Yes, sir.

Q. Have you any record during this month of [illegible] in the vicinity of your place—are there entries [illegible] to have about 1st? A. Only on the 16th, 12 o'clock.

Q. The 16th, at 12 o'clock midnight? A. Yes, sir. That is the first [illegible] had.

Q. What is the first [illegible] you had? A. Yes, sir.

[illegible] From where are the observations [illegible]

[illegible] the New York Central [illegible] between [illegible] and 72nd Streets, New York.

Q. What was the next that you have a record of any ice in the river?

Mr. Arndt: I object as incompetent, irrelevant and immaterial, after the date of the accident.

Mr. Matheson: Not after the date of the accident. 5163

The Court: This is the 19th.

A. No more ice on my watch. The next is the 20th.

Q. December 20th, what time? A. Between 12 and 4. There was some at 12 o'clock, but 4 o'clock it started to open in the bridges.

Q. About 4 A. M. on December 20th? A. The 20th, that is along the shore.

Q. How was the wind at that time? A. 4 o'clock, wind, southwest, snow, and temperature 3°. 5165

Q. That is 4 A. M.? A. Yes, sir.

Q. Is there another entry about ice on that morning? A. Yes, but it is not in my time.

Q. That is in the day man's time? A. That is the day man.

Mr. Matheson: Do you mind if we put that in, or shall we call the day man?

The Court: It is probably familiar with the handwriting of the day man.

5146 Mr. Axtell: Let me see it, please.

(Mr. Axtell looks at entry.)

Mr. Axtell: Do you want to offer this book in evidence?

Mr. Matteson: Yes.

Mr. Axtell: Whose handwriting is this, Ice 50 feet off the shore?

The Witness: That is the relieving dispatcher, Larry Grace.

Mr. Axtell: Whose handwriting is above it, the same handwriting?

The Witness: I come down to here.

5147 Mr. Axtell: Whose four lines are these?

The Witness: Larry Grace.

Mr. Axtell: It is obviously different ink.

The Witness: It is all one day. The ink might be thicker.

Mr. Axtell: We will let it in evidence. Mark the pages in evidence.

Mr. Matteson: The book is a large one. Hadn't we better read it in?

Mr. Axtell: I would like the Court to look at the different handwriting as to ice here.

5148 By the Court:

Q. What kind of a pen did you use there? A. A common stub pen.

Mr. Axtell: This man did not write it—did you?

The Witness: No.

Mr. Axtell: He said the other man wrote it, but the handwriting of the four lines above is the same writing. I do not

question its accuracy. I want it to appear 5149
it was not written at the same time.

The Witness: The day man relieved me at 7:10.

Mr. Matteson: The entry is as follows:

"Ice 50 feet off shore and heavy in the bridges at 7 A. M." That is December 20, 1926.

Q. How do you account for one of those entries being in different handwriting from the other entries? A. It is the day man that wrote it. He was the relieving man to relieve me at 7 o'clock.

Q. He would, in all likelihood, use the same ink you did? A. Sometimes the ink is thicker in 5150
one stand than it is in the other.

Q. You have two inkstands? A. Three of them. Sometimes it gets so thick we thin it down, and that makes a difference in the color.

Mr. Matteson: I would like also to read in, your Honor, in evidence, all the entries for December 19th and 20th, the day before the accident and the day of the accident. There is an entry made every four hours. I would like to read those into the record.

5151

Mr. Axtell: What do you want to show, that there was no entry of ice before this?

Mr. Matteson: He testified to that. I want the conditions every four hours during these two days.

Mr. Axtell: Will you concede they are written in this particular colored ink, and are squeezed in and stuck in as you fellows say ours is?

Mr. Matteson: They are not squeezed

5152 in. They have a line to themselves. It seems to be a practice to make these entries in red ink most of the time, that is why they are different.

The Court: I do not see any squeezing in. They all seem symmetrical enough.

Mr. Matteson: They have a line to themselves.

By Mr. Matteson:

Q. These entries as to weather, are they written in the same sort of ink as— A. The day of the
5153 month and the weather is written in red ink.

Q. That was the custom, was it? A. Always since I was there.

Mr. Matteson: I will read the entries for the 19th and 20th.

"12 midnight, December 19th, N. W. wind, clear, tem. 10 degrees, ice.

4 A. M., wind N. W., clear, temp., 11 degrees.

8 A. M., clear, N. W. wind, 16 degrees.

12 noon, clear, N. W. wind, temp. 20 degrees.

5154 4 P. M., clear, S. W. wind, temp. 20 degrees.

8 P. M., clear, S. W. wind, tem. 28."

December 20th:

"12 M., wind N. W., clear, tem. 22 degrees.

4 A. M., wind S. W., snow, tem. 27 dedees, ice."

Next entry: "Ice 50 feet off shore and heavy in the bridges at 7 A. M."

8 A. M., cloudy, S. W. wind, tem. 30 degrees.

12 noon. cloudy, N. W. wind, tem. 38 degrees. 5155

4 P. M., cloudy, S. W. wind, tem. 38 degrees.

8 P. M., cloudy, S. W. wind, tem. 40 degrees."

Q. Now, Mr. Chrisler, one more question. Will you tell us when your next record of any ice in this month was? A. After that?

Q. Yes. Will you look through and find it for us, please? A. I do not know if there is any in there or not. (Witness looks through book.) The 23rd. 5156

Q. When is that? A. December 23rd.

Q. At what time? A. 4 A. M., N. E. wind, clear, tem. 24; ice.

Q. I would like to have you identify these other books. These two bunches of books I have, are they records of the same description with reference to other years? A. Yes, sir.

Q. And kept in the same manner? A. Yes, sir.

Mr. Matteson: That is all.

Mr. Axtell: Let us have the one for 1925.

(Produced.) 5157

Cross examination by Mr. Axtell:

Q. Now, did the same man write the stuff in red ink that wrote the other? A. Yes, sir. I wrote with a pointed pen. The other is a stub pen.

Q. Is it written at the same time, that is to say, do you fill out line by line, or do you put that in at some particular time, the observation about the weather? A. Just as we go along.

5158 Q. 12 o'clock on the 19th, that is really midnight of the 18th, isn't it? A. Yes, sir.

Q. That was 48 hours or more before this accident occurred?

Mr. Matteson: He does not know about the accident.

Q. Didn't you hear about this boat? A. I heard about it, but I did not pay attention to it.

Q. You didn't? A. No.

Q. How long have you been up there, Mr. Chrisler? A. The 14th of last November it is
5159 22 years.

Q. Didn't you make a notation of the weather conditions every day? A. When they required it.

Q. Here are a whole lot of days when there were no notations at all.

Mr. Matteson: You will find them every four hours, Mr. Axtell, if you look.

A. 12 and 4 I put them in there.

Mr. Matteson: Some watches are much
5160 longer than others.

Mr. Axtell: Oh, I see, so many more entries.

Q. You are about two miles below 95th Street, aren't you? A. The pier the office is on is between 67th and 68th Street.

Q. That is 30 blocks, a mile and a half, nearly two miles? A. Yes, sir.

Q. Does the ice usually come up from down below, or come down from up the river first? A. On the ebb tide it would come down, that would

interfere with the 62nd Street bridge, and on the flood tide the ice going down comes back, and interferes with the 68th Street bridge. 5161

Q. You make note of the ice because of interference? A. Yes, sir, it interferes with the tugboat.

Q. That is why you have a notation about it? A. Yes, sir.

Q. These scows are cut under, they slant out? A. The floats.

Q. That is to accommodate ice, isn't it? A. Overhang—no.

Q. That is one reason? A. Partly; partly for bridges and partly for easier towing. 5162

Q. Just a few cakes of ice would not bother you? A. No.

Q. And you would not make any notation if there was a few cakes of ice? A. Sometimes, if there are only a few sometimes you are bothered as much as if there is a whole lot.

Q. You did not make notations in the log? A. If I had to put another tugboat in to help the one there, I had to charge it against the other tugboat.

Q. Two or three cakes of ice as big as this desk would not interfere with a carfloat? A. Yes, you have to get such a position for the pin, to put the pin in the float to get the cars off. If they get a cake of ice on one—— 5163

Q. I say two or three cakes the size of this desk in your slip would not interfere with your taking a carfloat 300 feet long and 46 feet wide in. Do you say three cakes of ice the size of this desk, 3 or 4 inches thick, would interfere? A. 3 or 4 inches thick the tug would shove it over.

Q. You did not see the ice more than 3 or 4

5164 inches thick on the night of the 19th? A. I did not notice the thickness.

Q. The reason you made note on the 18th was because there was ice on the surface? A. There was ice that interfered.

Q. That had interfered with your boat? A. Yes, sir.

Q. A few cakes of ice 3 or 4 inches thick, that might happen to flow in your slip, would not interfere with docking a carfloat, would it? A. If it laid flat so the tug could not shove it over or break it, it would interfere the same as if it
5165 was 6 inches thick. You cannot go by the thickness of the ice. It is the way the floe is, if the floe is in the slip in certain bridges they have no show to shove it over.

Q. How much is the horse power of the tugs? A. Different sizes, from seven to nine hundred to eleven hundred.

Q. And a carfloat carries how many railroad cars? A. Anywhere from 8 cars to 18.

Q. What size carfloat did you have in there on the 18th, can you tell me that? A. By looking at the book I can, with the number of the float.

Q. On the morning of the 19th when you had
5166 the ice notation, what scows were in there? A. A 12-car float and two 12's, one on the south bridge.

Q. Which one of those floats did the ice interfere with so you had to put it down in the log-book? A. It ain't on either one of them.

Q. Any small floats in there? A. Yes; we got one in there, 11, an 8-car float.

Q. You made note of that ice yourself? A. Yes, sir.

Q. Was it thick ice? A. I do not know how thick it was. 5167

Q. Lots of it? A. Where I am, I could not see how thick it was.

Q. Lots of it? A. It ran out even with the end of the pier, sometimes it would extend beyond the pier.

Q. Is there anything there to indicate there was any delay in getting a carfloat in the dock when you made a note of ice on the 19th? A. I do not know, not particularly.

Q. Are you sure there was any ice there at all? A. Yes, positive, or I would not put it in there.

Q. Every time there is a cake of ice in the Hudson River do you put it in the book? A. No, anything that don't interfere with the tugboat I don't put in there. 5168

Q. It is possible there might have been ice in the Hudson River that you have not in your book? A. Certainly there might be. I cannot see the whole Hudson River. I can only see straight across, and sometimes you cannot see across, and for that reason I cannot tell you how much ice there was in the river.

Q. There was ice for about a week before this, wasn't there? A. Not to my knowledge, not in my shift there was not. 5169

Q. Not enough to interfere with the boats? A. None at all that I see.

Q. Are these indications of weather supposed to be correct? A. We have a thermometer hanging outside the office window. We go by that. That is the only thing we go by. I would not swear if that is right or not.

Q. Does it ever freeze water down there in the

5170 slip itself, any water ever freeze there? A. Yes, sir, if it is left there till it is froze enough.

Q. It has frozen there in the slip at times? A. It will freeze together, the ice will.

Q. Cakes of ice that get on top of each other? A. Yes, get on top of each other, and if left alone for any length of time they will join together.

Q. The ice you saw on the 19th, or early morning or night of the 18th, was that ice that was made here in the harbor, or did it float down or up from somewhere? A. I do not know. When I seen it it was in the water there. Certainly no

5171 fresh water ice gets down here.

Q. You have a temperature in the early part of December 13 above zero and 11, and so forth? A. Yes, sir.

Q. That is cold enough to freeze water right in your slip, isn't it? A. I should think so.

Q. That ice that makes in your slips sometimes flows out into the river? A. When it gets broke up it comes out.

Q. Will you look at your record for the 5th of December and look over the next few pages there and see if you find pretty cold weather? A. On December 4th it was 20.

5172 Q. Do you find any indication of ice during this cold weather? A. There is no ice that I see up to the 19th, the night of the 18th and morning of the 19th.

Q. Have you any recollection after you looked at the logbook of having seen ice frozen in your own slips there during that cold spell on those days in the early part of December? A. No, I did not see none freeze in there.

Q. It was cold enough to freeze it? A. It would be if it was left still, if there was no business carried on there it might.

Q. Will you look at this book for 1925 and tell me if this is correct, that there was ice on December 29, 1925? A. 4 A. M. wind N. W., temp. 23, ice. 5173

Q. Is that your handwriting? A. Yes, sir.

Mr. Matteson: My next witness will be a man who has been through these logs for the last five years, and who can give us the first date in every year when ice appeared.

Mr. Axtell: We are interested in this year, because they admitted they operated the boat until January 5th of this year, 1925. 5174

Q. You do not remember, I suppose, where that ice came from any more than you do this year? A. No. All we know where it comes from is when we get there, either from up the river or down.

Re-direct examination by Mr. Matteson:

Q. Mr. Chrisler, you make your entries at 4, 8, and so forth? A. 12 and 4.

Q. Do you wait until you find out something is to be delayed when you enter ice, or do you put the ice down when you see it? A. When we come to it. 5175

Q. When you see it? A. Not when we see it. When I make the entry for the ice at 12 or 4.

Q. When the wind is westerly does the ice have a tendency to come in on your slip? A. It stays in there.

Q. And when it is easterly it goes the other way? A. To the west shore.

5176 Q. You have been employed by the New York Central for 45 years? A. Since the 29th of January, 1889.

Recess till 2 P. M.

Met pursuant to adjournment at 2 P. M.; present as before.

R. R. BOGART, called as a witness on behalf of the petitioner, in rebuttal, having been duly sworn,
5177 testified as follows:

Direct examination by Mr. Matteson:

Q. Mr. Bogart, what is your position?

Mr. Axtell: May I interrupt you just a moment? In the first instance, there is a man named Joseph C. Kay, who has come down here, in fact, he was subpoenaed. He was here this morning, but I did not call him because his evidence seemed to be cumulative with that of Mr. Medlicot and
5178 others. However, he is here and he wants to return to Bridgeport. If the other side want to call him they can call him as their witness. We do not want any unfavorable comment to be made or any inferences to be drawn by the Court because he has not been produced. If he is to be called we would like him to be called at this time.

Mr. Englar: We are not interested in the subject at all.

Mr. Axtell: Then he may be excused. If

your Honor please, I have a letter here 5179
from a man in York, Pennsylvania, who says that a claim has been filed by a man named Kakoe. I called upon him for proof, and he said that his body had been found in the vicinity of the boat, or something of that sort. But we have no proof to offer on that point other than relatives believe him to have been lost. We ask to have this letter marked for identification, simply trying to discharge my duty to this particular person.

5180
(The same was marked Claimants' Exhibit KKK for identification of this date.)

(The last question was repeated by the stenographer.)

A. Assistant dispatcher.

Q. Is that at the terminal of the New York Central Railroad Company at 59th to 77th Street, New York City? A. They call that the 68th Street, Pier G.

Q. Your office is at 68th Street, New York, Pier G? A. End of Pier G.

5181
Q. Do you assist in keeping these books or records of the New York Central, working of tugs? A. From 7 in the morning until 3 in the afternoon.

Q. You make some of those entries yourself? A. I make them all, as a rule, except my assistant happens to be on the 'phone at the time.

Q. You make them during the day time? A. Yes, sir.

Q. Did you make these entries on the 19th and

5182 20th of December, 1926, in this book that has been produced, during the day time? A. I do not think so. That day was covered by Mr. Grace on the 20th, that is not my record there.

Q. Did not you start to say some of that was written by you? A. I started in later.

Q. Just tell us the day and hour when your entries start? A. On this particular occasion I was relief dispatcher, I was not a steady man at that time.

Q. Then your entries are scattered, are they? A. They are scattered, yes, in different places.

5183 Q. That book is part of the records of the New York Central Railroad kept in the regular course of business, is it? A. Yes.

Q. Mr. Bogart, you have a number of these books around here; do you recognize them as records of the New York Central Railroad Company? A. Yes, sir.

Q. Have you been through the records for the four years preceding this, and if so, can you tell us what the first date in each year on which the appearance of ice is noted in these records was? A. Some time ago, Mr. Hamlin, chief dispatcher, called me up and asked me to go through the

5184 records, which I did. And I gave him the notation I found in the books for the years he asked for.

Q. Can you give them to us? A. Not offhand I cannot give it to you, not offhand, no.

Q. Can you by refeshing your recollection? A. By referring to the record, yes.

Q. Give us all the years you looked up. A. They told me to look at the winter of 1922 and 1923. The first records I found in these records of workings of tugs was January 17th.

Q. That was January 17, 1923? A. Yes, sir. 5185

Q. Now, the next winter, 1923 to 1924? A. The next one from 1923 to 1924, was February 4th.

Q. February 4, 1924? A. 1924.

Q. Now, from 1924 to 1925? A. In 1924 to 1925 the first record of it in the book is January 3rd.

Q. And in 1925 to 1926 what was the first record? A. 1925 to 1926 was December 29th.

Q. In 1926 to 1927, what was the first record? A. December, 1926, to 1927, I mean 1926 to 1927, is December 19th.

Q. December 19th? A. Yes, sir. 5186

Mr. Matteson: That is all.

Cross examination by Mr. Axtell:

Q. Did I understand you were one of the men at the pier up there? A. I am, yes, sir.

Q. Have you had any conversation with anybody about this case before coming here to testify? A. Only with people that came up to examine the books.

Q. Who was it came up there? A. Why, one young man, he is sitting here now, he came down and got permission of Capt. Fay to look over the books, which he did. 5187

Q. Who is Capt. Fay? A. He is my immediate superior, the superintendent there of the New York Central.

Q. What was this first called to your attention? A. I might say 10 days ago, possibly.

Q. Was anybody down there in December, 1926? A. Of what year?

5188 Q. Last year. A. I could not say; I was not there at the time; I do not know.

Q. How long have you been there? A. I have been on this station for six months.

Q. You do not know anything about what was going on in 1926, do you? A. No, I do not.

Q. You have been testifying about things that went on three or four years ago, haven't you? A. No; what I have been testifying to is that my chief dispatcher, Mr. Hamlin, asked me to look up the records in the books for the previous years when ice was first noticed in the river.

5189 That is as far as I can say, that is all I know about it. That is the first I was asked about it, and I did not know why he was asking me that.

Q. You do not know anything about the custom or practice when they record ice or when they do not? A. Why——

Q. You have only been there six months, you have not seen any ice this year, have you? A. Certainly we have.

Q. You have had ice this year? A. Yes.

Q. Ice this year? A. Yes, we have plenty of it right now, today.

5190 Q. Where did it come from? A. That I do not know; it is in the river; I do not know where it came from. It is down on one tide and back on another.

Q. Did you notice any today? A. I did when I came off the pier at 11 o'clock.

The Court: The river is full of ice?

The Witness: It is full of ice today.

Q. I did not notice it. Well, you do not note ice in the log unless it is such as it is noticeable in

the slip? A. We notice ice every four hours if 5191
it is there. It does not have to be in the river or in the slip, and it does not have to interfere with us. It can be in the middle of the river and not interfere with us at all, but it is noted every time it is in the river.

Q. Are you keeping the record for the benefit of the public or for the New York Central? A. For the benefit of the New York Central.

Q. How does ice affect the New York Central? A. Why, at times it delays them to a certain extent.

Q. In the slips? A. Yes, sir.

5192

Q. That is the ice you note, is it not? A. In fact, we note it whether it has any tendency to delay us or not.

Q. That is, if it is in the slip? A. If it is in the river.

Q. If it is in the slip? A. If it is in the river either.

Q. Do you go out in the river? A. It is not necessary to go out in the river; I can see across the river very easily.

Q. How long have you been in this job? A. Five years tomorrow as dispatcher.

Q. Not on this particular job? A. No. 5193

Q. How long have you been on this one job? A. Six months.

Q. Where were you before that? A. Relief dispatcher, 2½ years.

Q. Where? A. Different stations.

Q. What stations? A. Pier 17, North River, and 68th Street.

Q. Did you ever have any ice down at Pier 17? A. Oh, yes, frequently.

5194 Q. How early in the season does it come there? A. That I could not say; it all depends upon the condition of the weather.

Q. Have you ever had it there in December? A. I do not know if we had this year December or not; in fact, I do not recall.

Q. You have had it in other years? A. I could not say; I do not remember that particular fact.

Q. You never can tell when it is going to come down? A. No, you cannot.

Q. You can expect it any time after a thaw when there has been cold enough weather to
5195 freeze ice up the river, isn't that right? A. I cannot tell you the condition of the weather that produces it; I can only tell you we have not had any before December this year.

Q. The ice forms up the river and floats down with the tide? A. Yes.

Q. Boats break it up in pieces and it floats down? A. Yes; we do not make much ice where we are, because there is a motion there all the time.

Q. You do not depend on your observations as to ice floating down, you consider what floats up? A. Yes.

5196 Q. Does it ever float up? A. Yes, it goes up with the tide.

Q. But does it ever come from Greenville Flats or that section? A. That I could not say.

Q. But you have seen ice floating upstream? A. It is bound to with the tide.

Mr. Axtell: That is all.

Mr. Matteson: That is all.

(Witness excused.)

LOUIS SAYER, called as a witness on behalf of the petitioners, in rebuttal, being duly sworn, tes- 5197
tified as follows:

Direct examination by Mr. Matteson:

Q. Mr. Thayer, you are connected with the Pennsylvania Railroad, are you? A. Yes, sir.

Q. In what capacity? A. I have charge of their boats.

Q. And where is your office? A. In Jersey City, on the end of Pier D.

Q. Do you keep track of the movements of the boats of your company? A. I direct the move-
ments, and the results of those movements are 5198
recorded and come before me.

Q. You keep records, I suppose? A. Oh, yes, very elaborate ones.

Q. Do you keep a record in which you make a note of ice conditions when they appear in the North River? A. Yes, sir.

Q. Have you examined your record on that subject for the year 1926? A. I have.

Q. And what territory does this record of yours cover, Mr. Sayer? A. Why, it would practically cover in general upon every route that we tow, which might be from about 155th Street to South 5199
Amboy on the south.

Q. What is the first record you have of ice in the month of December, 1926? A. On the 23rd.

Q. You have no record of ice appearing in the North River before that? A. No record of ice previous to the 23rd of December, 1926.

Q. Principally where are the boats under your supervision engaged? A. Principally?

Q. Yes. A. Well, in the North River between 68th Street, where we interchange with the New

York Central, and Greenville, where our own terminal is, for the North River, I am speaking.

Q. And your record relates to that territory, does it? A. Yes.

Mr. Matteson: Your witness.

Cross examination by Mr. Axtell:

Q. Do you make the record yourself? A. Counsel, you will have to speak louder to me.

Q. Do you make the record yourself? A. Yes, sir.

Q. Where were you located at the time? A. On Pier D, Jersey City.

Q. Where is that? Would that be the first pier there? A. It is the first pier above our ferry slips.

Q. Opposite what pier, Mr. Sayer? A. Oh, opposite about 14.

Q. New York? A. New York.

Q. What do you do at that pier? A. What do we do at that pier?

Q. Yes. A. Was that the question?

Q. Yes. A. The south side of it acts as a bumper for the ferries, and the lower deck is given up to freight, and the upper deck has the doctor's office and my office, and some spare room in it.

Q. What do they dock there, carfloats? A. The north of it, right north of it, they do.

Q. Have you got anything to do with the carfloats? A. I handle them.

Q. How much ice did you have on the 23rd? A. Well, there was a fringe of ice along the New York shore which filled the slips and was some-

what out in the river; I could not say whether 5203
it was 100 yards or 100 feet out, but there was quite a little bit of ice that morning.

Q. And was that ice going upstream or downstream when you looked at it? A. I cannot recollect that.

Q. Did it interfere with navigation on the Jersey side? A. No, sir; there was a northwest wind that day; it was all on the New York shore.

Q. How did you happen to make a record of its presence if it did not interfere with your navigation in any way? A. I saw it.

Q. Is it your job to make a note of what you 5204
see on the river? A. Why, provided it might be of value to us at a later date, yes.

Q. Tell me what else you saw on that date that you have in the logbook for the 23rd. You can refer to the logbook to refresh your recollection.

Mr. Matteson: Did you hear the question?

A. Yes, he asked me to tell him what else I saw on the 23rd of November, 1926.

Q. Was it November? A. 23rd of December, 1926, what else I saw. The first entry would in- 5205
dicate that I looked at the thermometer, and that it stood at 20. The barometer was 30.6. It was a clear morning, northeast wind, wind blowing about 8 miles an hour. I presume you just want such records as might be somewhat like an ice record, or have reference to that.

Q. No, anything else you saw on the Hudson River that you made a note of that did not concern your navigation. A. I did not note anything else.

5206 Q. May I see the entry? A. Yes, sir. (Hands book to counsel and counsel inspects book.)

Q. I notice your entry about the ice is written down at the bottom. When did you write that? A. Why, I cannot recollect, but I know it was the day it occurred, that is all, I can swear to that.

Q. Why didn't you put it up here with the weather at the top? A. I put it either place; if you will look along you will find it through the book, that I have no practice about that.

Q. Well, I suppose the Pennsylvania has some
5207 landing piers on the New York side, hasn't it? A. We have 77, 8 and 9, 29, 8 and 7.

Q. At what street is there a pier on the New York side? A. 77 is up about 34th Street, the upper bunch of piers, and the others are down around Desbrosses, and down here at Pier 2, that is way down almost at the Battery.

Q. I see on the 11th here you have at the top underneath the barometer and the wind an entry "Light snow with fog after 10 A. M." Is that correct? A. Yes, I keep rain, fog, snow and ice. I have to know something about the weather, if it is blowing hard from the northwest I have
5208 got to make up my mind whether I had better send four or five tugs down to South Brooklyn to clear up the waterfront. If I do it I will expend five or six hundred dollars, and if the wind goes down, that is wasted.

Q. On the 3rd of December you have at the bottom, "First snow, 5:55—8:30;" that is right, is it? A. Yes.

Q. It looked as though the winter was coming on there? A. That was the first snow that I stated there.

Q. There was snow here yesterday, Saturday, was there not? A. You were here. 5209

Q. I want it on the record; you observed the snow day before yesterday, didn't you? A. I had about 2 inches here, although the City said 4.

Q. You do not know of any other snow this year until the 28th of January, do you? A. I think we had a trace, but it is only a matter of recollection.

Q. It did not cost the City anything to haul it off? A. No.

Q. And you had ice on the 24th and 25th of December, didn't you? A. I do not recollect. 5210

Q. You have not any reference to it, have you? A. I do not know.

Q. Just look and see. A. The 24th and 25th, there is nothing until the 25th, that was rain turning to sleet, with high northeast winds. The fact that ice is not recorded here does not mean we did not have it.

Q. Just see if there is any other reference to ice. A. No, sir.

Mr. Matteson: You were about to complete your answer.

The Witness: I said it has no significance that that entry does not follow from day to day that there was ice; the significant fact was that that was the first ice that I made a record of. 5211

Q. Who told you that was significant? A. I am using my own judgment.

Q. You do not know anything about the issues of this case? A. Nothing.

Q. Ice is significant, is it not? A. It may not

5212 be significant to you, but it is to me, to note the first ice.

Q. It is the first you noticed? A. Pardon me?

Q. It is the first ice you noticed? A. Yes.

Q. I thought you said that the presence of ice in the Hudson River, I thought that you explained that the presence of ice in the Hudson River was important to your company. A. It is expensive.

Q. I thought you made a note of it because it would be of some importance on the 23rd of December, is that right? A. Why, I cannot answer that either yes or no.

5213 Q. Do you know who the attorneys for your company are? A. I can answer you——

Q. Answer me yes or no. A. We have a number.

Q. Do you know Mr. Clark? A. Not very well.

Q. Do you know Mr. Burlingham? A. A young man?

Q. You know the firm I am talking about, don't you? A. I do not know the older man.

Q. Burlingham, Veeder, Masten & Fearey, general counsel for the Pennsylvania Railroad Company in New York, in entire charge of your admiralty work, shipping? A. You may know more

5214 about it than I, sir.

Q. Do you not know that? A. I do not know that they are in entire charge of our work, and I do not that they are the only ones we have. I know we do have them.

Q. When did you first discuss this matter over with anyone? A. Oh, this was a matter of interest to every boatman on the river. I cannot answer that definitely. Probably within an hour or a half an hour after it happened I talked it over with someone.

Q. This accident you mean to the "Linseed King," you knew about that? A. Yes, I read the papers, sir. 5215

Q. Didn't you see any ice on the 20th of December? A. No, I did not see any ice previous to this 23rd of December.

Q. You do not think there was any ice on the 20th of December? A. Not down the river.

Q. What time did you go on to your office that day, what time did you go on duty? A. Well, I usually get at the office about five minutes past eight.

Q. In the morning? A. In the morning, yes, sir. 5216

Q. Is there any ice in the river today? A. Yes, sir.

Q. Down as far as your pier? A. Plenty of it; not on my side, but the first ice in the river this year was yesterday. I saw it on the New York shore quite particularly. And of course you have no idea how many different things interest us. I have been waiting for the ice to come along and scour up the bottom of our ferryboats so they would ride a little faster. That was done yesterday. All of our perishable floats last night, some 30, were all battered through the ice over at Pier 28. So you see, ice cannot occur without getting close to my skin. 5217

Q. The ice that was in the river last night, was that dangerous for your wooden boats? A. Why, most of our boats are wooden.

Q. I say, is it a fact that the ice was dangerous to wooden boats? A. Not danger of sinking, but delays forcing their way through.

Q. I suppose you do make some provision or allowance for ice in the construction of your boats,

5218 do you not? A. Double up with power and ram them into it, that is all.

Q. Do you put any kind of bumpers on the front of your boats at any time? A. No, sir.

Q. How thick is the planking of those scows that you ram into the ice? A. Are you speaking of carfloats?

Q. Wooden boats. A. Oh, well, you have got to take into consideration the size of them; there is a relation between size and planking.

Q. On the carfloats how thick is the planking? A. Well, 4 inches, but they are 1,000-ton boats.

5219 Q. Ice would not break them? A. It has, but it all depends on how hard you ram them into it.

Mr. Axtell: That is all.

Mr. Matteson: That is all.

(Witness excused.)

HOWARD P. FORT, called as a witness on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

5220

Direct examination by Mr. Matteson:

Q. What is your occupation, Capt. Fort? A. I am a master mariner.

Q. By whom are you employed? A. Dalzell & Company.

Q. Were you employed by that company in December, 1926? A. Yes, sir.

Q. What was your duty? A. Docking steamships.

Q. What tug were you master of? A. "Fred B. Dalzell, Jr." 5221

Q. Did you have anything to do with the docking of the steamship "Tercero" at Spencer Kellogg Sons & Company on December 19, 1926? A. Yes, sir, I docked her there.

Q. Did you have the assistance of any other tug besides the "Fred B. Dalzell, Jr."? A. I had another Dalzell tug.

Q. Where did you pick up the "Tercero"? A. At 9 o'clock I received orders that she was leaving Quarantine, and at 9:45 she passed the Battery, where I was lying. So I left there and came out to meet her. 5222

Q. You met her in the North River? A. She proceeded up the North River; she had her own orders where she was going. I followed her up until we got to 57th Street, when she slowed down, and I went alongside of her.

Q. What did you do then? A. It is my duty then to go aboard and dock the ship, relieve the Sandy Hook pilot.

Q. You went aboard, did you? A. Yes, sir.

Q. Did your tug make fast alongside? A. Yes, she made fast on the port bow.

Q. How did you proceed from there up to Spencer Kellogg's? A. We proceeded right along and docked the ship. 5223

Q. Did the steamship go on her own power or did the tugboat tow her? A. The steamship was using her own power.

Q. The tugboat was alongside the steamship? A. Yes, sir.

Q. Then did the steamship tow the tugboat or did the tugboat tow the steamship? A. The ship towed the tugboat.

5224 Q. Do you know what time it was when you docked her? A. It was around 11:45 when I finished the job.

Q. Captain, can you tell us whether there was any ice in the river at the time you did that job? A. Yes; there was some ice.

Q. Where? A. On the New York side.

Q. What do you mean? A. There was ice along the edge of the river bank, some extending out in the slips, about half way, some places out even with the piers.

Q. In the slips? A. Yes.

5225 Q. On the New York side? A. Yes.

Q. Was there any out in the river? A. There was not any out where I was; I was cruising on the New York shore, perhaps two or three hundred feet from the end of the piers, that is where the deep water is.

Q. Is ice of any importance in connection with your work, or does it affect your charges for towing? A. Doing work in ice, they double the towing charges, I believe.

Q. Did you report that to your employers; do you report it when you encounter ice in connection with any job? A. We have to.

5226 Q. For the purpose of making extra charges, is that it? A. Extra charges, yes, sir.

Q. You say you did not encounter any on that day? A. Not on that job I didn't no.

Q. And of course you made no report of that? A. No, sir.

Q. Can you tell us whether there had been any ice in the river before that day? A. I didn't encounter any ice that winter at all.

Q. Certainly none before the 19th? A. No, sir.

Q. You are positive of that? A. I do not re-

member having any ice that amounted to much of anything. 5227

Q. You did not see any before the 19th of December? A. It is hard to recollect, but I do not remember any ice conditions at all last year.

Q. The only ice you saw on the 19th was inside the slips on the New York shore? A. On that particular day I remember there was ice along the shore, what we would call in nautical terms "shore ice". It stayed there inshore and does not come out and come in with the tide; it is close in on the shore and stays there.

Q. It stays in the slips? A. That ice in the slips is liable to come out; if the wind is blowing right it will blow it out. 5228

Q. But the only thing you saw was shore ice frozen in along the shore, is that it? A. Yes, sir.

Mr. Matteson: That is all.

Cross examination by Mr. Axtell:

Q. Did you look up your records to see where your tug was from the 15th to the 20th of December? A. No, sir.

Q. Where do you tie up, Captain? A. Atlantic Avenue, Brooklyn. 5229

Q. The work of Dalzell's tugs is very largely that of berthing vessels, isn't it? A. Yes, sir.

Q. You work mostly down around the East River, do you not? A. We work all over the harbor.

Q. There is not so much berthing to do above, well, say 65th Street, is there? A. Well, there is a good many places, there is Warner's, there is Yonkers, there is 133rd Street.

5230 Q. There is not much to do up that way compared to down below there, is there? A. We average about three or four ships a day up the North River.

Q. Were you up there around the 20th of December, and a couple of days after that? A. No, I do not think I was.

Q. Did you go up to Yonkers at all that winter? A. No, I do not think I did.

Q. Did you go up to any place above 95th Street? A. I believe I had a ship up at 133rd Street.

5231 Q. About what time? A. That was the first part of December, I think.

Q. Do you remember the ice had started to come down about that time? A. I didn't see any ice in the North River.

Q. I show you a picture. See if you can tell me what this is. A. It looks like the North River.

Q. There is ice in it, isn't there? A. Yes.

Q. Isn't that the way it looked about the time you went up there to 93rd Street? A. With that ship?

Q. That is, 103rd Street? A. 133rd Street.

5232 Q. 133rd Street, that picture? A. No, the time I had the ship up at 133rd Street, that is right at the ferries up there; we didn't have any difficulty in docking the ship, didn't have any ice.

Q. You do not know when that was? A. No, I could not give you the exact date; I think it was around the 1st of December sometime. It was a lumber ship which we had up there.

Mr. Axtell: I ask that this photograph be marked for identification.

(The same was marked Claimants' Exhibit LLL for Identification of this date.) 5233

Q. Where were you on the 18th, Saturday? A. That would be a hard thing to tell unless I looked up my log and found out.

Q. You did not look that up? A. No, sir.

Q. Have you been around the harbor of New York some years? A. All my life.

Q. Do you usually have ice in the harbor in New York in winter time? A. It all depends on how bad a winter it is; if it is a mild winter we do not have much ice; a very cold winter we have plenty. 5234

Q. There is always some? A. Usually we get some in the spring of the year, yes.

Q. Ice comes down after a thaw? A. As a rule, yes, when it breaks up in the North River, if the wind is strong enough and the tide, that brings it down in the river.

Q. And the years when you have a heavy freeze for seven or eight days in the beginning of the winter, and then you have warm weather afterwards, you would naturally expect ice to come down? A. Surely.

Q. If you were thinking about it? A. Yes. 5235

Q. Is your tug a steel boat? A. No, she is wood.

Q. Wood? A. Yes.

Q. Is she sheathed in the bow? A. She is sheathed to the water's edge, copper sheathed.

Q. Do you ever carry anything in bad ice for protection? A. No, I haven't; there are some boats that do that are in the ice continually.

Q. Boats that go up where the ice is solid? A. The boats that go up there to break ice, they

5236 put something on to protect the boats. The boats running around the harbor, we do not put anything on here.

Q. Suppose you had in the early part of December seven or eight days of cold weather, and then you had three or four days of warm weather, how soon after that would you look for ice?

Mr. Matteson: If your Honor please, we did not call this man as an expert on ice; I do not think that is proper cross examination.

5237 The Court: Sustained.

Mr. Axtell: I can make him my own witness on that.

The Court: You have had your time in Court, it seems to me, and we have gone over this before.

Mr. Axtell: If I can show an absolute uniformity of custom and practice and knowledge on the part of people who are supposed to know what they are doing with their boats, it seems to me it would be helpful, that we would have one thing down in the record about which there would not

5238 be any controversy. However, I will not press the question any more. That is all.

Re-direct examination by Mr. Matteson:

Q. When you equip a boat for very heavy ice what do you put on the bow? A. They generally put a great big iron shoe on the bow.

Q. Describe it; how big is it? A. Why, it is built like a V, fits right over the stem and drops

into the water 8 or 10 inches, and it is above the stem 8 or 10 inches. 5239

Q. How far on each side of the stem does it go? A. About a foot or two each side of the stem.

Q. That is special ice equipment? A. That is for breaking ice.

Mr. Matteson: That is all.

Re-cross examination by Mr. Axtell:

Q. How thick are the planks on your ship? A. The ordinary towboat planks, about 4 inches.

5240

Mr. Axtell: That is all.
Mr. Matteson: That is all.
(Witness excused.)

HARRY ERICKSON, called as a witness on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Matteson:

Q. Mr. Erickson, or Captain Erickson, you are also a Dalzell tugboat captain, are you not? A. Yes, sir. 5241

Q. What tug are you on? A. I was on the "Fred B. Dalzell, Jr." at the same time that Capt. Fort was there.

Q. Did you take part in the docking of the "Tercero" on December 19, 1926? A. Yes, sir, I was handling the tug.

Q. You were handling the tug? A. I was handling the tug, yes, sir.

Q. Where did you meet the "Tercero"? A. I

5242 should judge around 57th Street, North River, on the New York side.

Q. Did you follow her up from the Battery? A. Yes, sir, we followed her up from the Battery.

Q. And then how did you proceed from 57th Street to Kellogg's? A. Well, we stayed along the New York shore until we got pretty nearly abreast of Spencer Kellogg, and then brought the ship right in.

Q. Was the ship towing you or you towing the ship? A. The ship was towing us.

Q. Then did you go over to Spencer Kellogg?

5243 A. We docked her over at Spencer Kellogg's, yes, sir.

Q. Was there any ice floating in the river at that time? A. No, there was no ice. If there was any ice, I would certainly have known it, because the tug would not have laid alongside if the ship was towing the tug.

Q. Why not? A. Because the speed of the tug would drive the ice between the tug and the ship, and the tug would sheer off and would be apt to turn over.

Q. The ice would come in between the tug and the ship? A. Yes, sir.

5244 Q. And cause some damage? A. Yes, sir, owing to the speed of the ship.

Q. Had you seen any ice in the harbor prior to that time? A. I had not seen no ice at all. There might have been a little ice along the shore, what we call shore ice, that takes a pretty big wind to bring it out.

Q. But nothing out in the stream? A. Nothing at all out in the stream.

Mr. Matteson: That is all.

Cross examination by Mr. Axtell: 5245

Q. Was there any ice the next day? A. The next day, I could not say.

Q. Was there any ice on the 21st? A. I cannot say as to that.

Q. How is it you can be so positive there was not any on the 19th, and you cannot remember about the other days? A. Because I happened to know this particular day, it being a Sunday and we being right at the Battery.

Q. I know, but you say you are positive there wasn't any ice on the 19th? A. I would certainly have known it if I had seen it; it would have 5246
driven the boat away from the ship, one piece of ice could do that easily enough.

Q. Aren't you positive there wasn't any on the 20th too? A. The 20th; I wasn't up there on the 20th.

Q. What day was the 19th? A. Sunday.

Q. What were you working on on the 20th? A. The 20th, I might have been in Amboy on the 20th.

Q. Was there any ice there? A. In the Amboy, I could not say.

Q. How is it you could not say? You can be positive about Sunday, but you cannot be positive 5247
about Monday; why is it? A. Because I remember this particular date.

Q. Have you been talking this over with somebody? A. No, sir.

Q. Before you came here? A. No, sir.

Q. Not at all? A. No, sir.

Q. Do you know who the lawyers are that represent Dalzell? A. No, sir.

Q. You do not? A. Never had any occasion to meet them.

5248 Q. You have not talked with anybody from their office? A. No, sir.

Q. Do you know whether they are the same lawyers that are in this case? A. No, sir.

Q. You do not know who the lawyers in this case are, do you? A. No, sir, I do not.

Q. You do not know why you were called here, do you? A. The only man I talked with was Capt. Fort.

Q. You do not know why you were called here? A. I know I was called in the "Linseed King" case.

5249 Q. To give testimony? A. To give testimony, yes.

Q. To give some testimony? A. To tell the truth and nothing but the truth.

Q. To tell what the conditions were in the river on that day? A. The conditions I seen in the river on that day.

Q. On the 19th? A. On the 19th.

Q. Now, I ask you what were the conditions on the 20th? A. I do not remember seeing any ice in the river on the 20th where I worked.

Mr. Axtell: That is all.

5250

Re-direct examination by Mr. Matteson:

Q. Have you looked up your records for the 19th at my request? A. Have I looked at them?

Q. Or did Capt. Fort? A. I think Capt. Fort had a slight look at them.

Mr. Matteson: That is all.

(Witness excused.)

ALBERT F. SCHMIDT, called as a witness on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows: 5251

Direct examination by Mr. Matteson:

Q. Capt. Schmidt, what is your occupation? A. Master of steam vessels.

Q. And for whom were you working in December, 1926? A. The Atlantic Lighterage Company.

Q. Do you remember what you did on say the 18th of December, 1926, or that night? A. Yes, sir.

Q. What did you do, do you know? A. Well, I can remember taking three barges to Archer Daniels. 5252

Q. Where is Archer Daniels? A. They are above the Erie Coal Docks at Edgewater.

Q. What boat were you on at that time? A. "The Kangaroo."

Q. Did you tow them up there? A. Yes, sir.

Q. Did you encounter any ice that night? A. No, sir.

Q. Do you know what time you went up there? A. Well, I landed up there around 11:30.

Q. 11:30 P. M.? A. Yes, sir, about that.

Q. Where did you go after that? A. 155th Street, North River. 5253

Q. Is that where the Atlantic Lighterage Company has its office? A. No; they have a shop there and we lay up there over Sunday.

Q. You went there and laid up? A. Yes, sir.

Q. Have you looked through the log of your boat, the "Kangeroo," for the month of December, up to that time? A. I have, yes, sir.

Q. By the way, do you make any notation in your log when you encounter ice? A. I do, yes, sir.

5254 Q. Did you encounter any ice prior to December 18, 1926? A. No, sir.

Q. These are your logs I have in my hand? A. I guess they are, yes, sir.

Q. On Sunday the 19th you were not operating? A. No, sir.

Q. The boat was laid up and you were off, is that right? A. Yes, sir.

Mr. Matteson: That is all.

Cross examination by Mr. Axtell:

5255 Q. Where does the "Kangaroo" hang out, where did it hang out? A. 155th Street, North River.

Q. It was there on the 20th? A. It was there on the 19th.

Q. Were you on the boat on the 20th? A. The day crew brought her out on the 20th.

Q. Weren't you at that time present on the boat, on the 20th? A. No, sir.

Q. Were you ever there any part of the 20th? A. No, sir.

Q. Were you there on the 21st? A. Well, I come by there, yes, sir, not at the shop.

5256 Q. Did you hear about this accident? A. Why, certainly.

Q. To these people? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. Did you see any ice in the river that day? A. Not that I saw; I looked for it and I could not see any.

Q. Was there any on the day following? A. Well, I cannot say; I do not remember that.

Q. How far up the river can you see from 155th Street? A. It all depends on the visibility of the atmosphere.

Q. Where were you on the 20th? A. 20th, day time? 5257

Q. Yes, A. I was home in bed until about 12 o'clock noon.

Q. Is there usually ice in the Hudson River in the winter time? A. That depends on weather conditions.

Q. Is there any ice today? A. Yes, sir.

Q. You were on the tug today? A. No, sir.

Q. Did you cross the river to get here? A. No, sir.

Q. Did you ever see the Hudson River when it looked like this? I show you a picture taken on the 20th at 104th Street. A. Yes, sir, I have seen it look like that. 5258

Mr. Matteson: Is that an exhibit?

Mr. Axtell: Yes.

Mr. Matteson: What number?

Mr. Axtell: Exhibit BB.

Q. Was there any ice like that on the 20th in the Hudson River? A. I do not know; I was not there on the 20th.

Q. There was some on the 18th, is that right? A. No, sir.

Q. Did you see any ice last winter at all? A. Why, certainly. 5259

Q. Have you got any record of it in your log-book? A. If it is in those logs, there is.

Q. Tell me where you have got any record in your logbook? A. I cannot recollect offhand; I can look at them.

Q. I will let you look at them. A. None on my watch, while I was on the boat.

Q. How long a period does that cover? A. That covers the full month of December.

5260 Q. You have not got ice in any month that winter? A. Not on my watch.

Q. You are satisfied there was no ice? A. Not while I was on the boat.

Q. You are sure of it? A. I am sure of it.

Q. If there had been any ice you would have noted it? A. In my watch; I do not know anything about the other man's log.

Q. Look at the rest of the log, look at the other man's log, and tell me if there was any ice. A. I cannot answer for him.

Q. You can read his writing? A. I can read
5261 his writing, but I will not testify that it is his writing.

Q. Do you find any entries of ice in the Hudson River in that book for 1926?

Mr. Matteson: If your Honor please, I ask leave to excuse this witness and have him sit over there in the chair and examine the book.

The Court: Oh, yes, do that and call another witness.

(Witness excused.)

5262

DAVID STARK, called as a witness on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Matteson:

Q. Are you connected with the Fire Department of the City of New York? A. Yes, sir.

Q. In what capacity? A. Record clerk.

Q. Have you there a record relating to the fire on board the yacht "Delphine", and her sinking in the fall of 1926? A. Yes, sir. 5263

Q. Can you tell us what date that occurred? A. September 22nd.

Q. Is that the date of the fire or the date of the sinking, do you know? A. That is the day that we received the telephone call of this yacht, I received the telephone call at 12:44 A. M.

Q. On December 22nd? A. Yes, sir.

Q. Or September 22nd? Yes, sir, she was at the foot of 96th Street, North River.

Q. And later on that morning did the yacht sink off 96th Street? Does that appear, 95th Street? A. It gives the length, the beam and the depth, opposite 86th Street, North River, fire originated on the spar deck. 5264

The Court: Is it necessary for him to read all this?

Q. From this record it appears, perhaps the better way would be to read it into the record.

The Court: The entire card?

Mr. Matteson: No, just four lines. "Opposite 86th Street, North River, fire originated on spar deck aft engine room or space room, moored at Pier N, 95th Street, North River. Ship loaded down to port, the dead lights having been blocked by the crew. Before the arrival of Fire Department ship lowered down on beam until she filled and sank in 4 fathoms of water." That was on the early morning of September 22, 1926? 5265

The Witness: Yes, sir.

5266 Mr. Matteson: That is all.

Mr. Axtell: I suppose you are going to connect this?

Mr. Matteson: I am going to try to fix the time. Your witnesses have already mentioned the sinking of the yacht "Delphine".

(Witness excused.)

THOMAS F. QUINN, called as a witness on behalf of the petitioner, in rebuttal, being duly
5267 sworn, testified as follows:

Direct examination by Mr. Matteson:

Q. What is your occupation, Capt. Quinn? A. Master of steamboats.

Q. And are you employed by the Lehigh Valley Railroad Company? A. Yes, sir.

Q. Were you employed by that company in December, 1926? A. Yes, sir.

Q. Have you looked up your records at my request to see what you did on December 20, 1926? A. Yes, sir.

5268 Q. What watch were you on that day? A. I was on the middle watch.

Q. Which one is that? A. Well, it is 3 o'clock until whatever time we get through.

Q. Is that 3 o'clock in the afternoon? A. Yes, sir.

Q. Where did you go during that watch, do you remember? A. Well, I looked up my log. I first took two barges up the North River, one to 86th Street and one somewhere around that

vicinity. Then I towed a float from 27th Street 5269
to the Road. Then a little after 6 o'clock I got orders for a barge from the Road to 96th Street, North River, and towed 9 in.

Q. What do you mean by that? A. 9 coming back from the North River.

Q. You mean coming back you picked up 9 barges at different places along the North River and took them to the Lehigh Valley Terminal? A. Yes, sir.

Q. Did you encounter any ice on that day? A. No, sir, I did not.

Q. What makes you sure of that? A. When I 5270
came down to work that afternoon I heard them all taking about this "Linseed King" being sunk by the ice up in the North River, and it was one of the old barges that I had to take up to 96th Street, and I had taken her on the port side, and as I went along up I did not see any ice. I put her in the slip, over half way in the slip. There was a little slush ice in the slip. So I laid in there, and from there I went up to 135th Street, and I picked up a boat there and towed her down the river to Pier 99; that was my next stop. And so I continued to pick them up all the way down.

Q. And you had in mind the possibility of ice 5271
that day because of what you had heard? A. Yes, that kind of made me be a little cautious because I knowed that barge wouldn't stand any ice if there was any ice.

Q. Did you see any ice before that that winter? A. No, I do not recollect any ice.

Mr. Matteson: That is all.

5272 Cross examination by Mr. Axtell:

Q. You are of the opinion that something else besides ice must have sunk that boat, I suppose? A. Why, they claim it was ice sunk the boat.

Q. You did not see any? A. No, I didn't see no ice.

Q. Did you see anything else that might have sunk her? Do you think ice could sink a boat? A. Oh, yes, I do.

Q. How thick are the planks of this scow you are talking about? A. The barge?

5273 Q. Yes. A. About 4 inches.

Q. Do you mean to say that ice could damage a barge with planks that thick? A. Oh, yes, if she hit it right she will go in.

Q. It will? A. Yes.

Q. That wouldn't be little thin ice, would it? A. No, it would have to be a little heavy.

Q. Did you see any heavy ice in the harbor last year? A. Last year, oh, yes, later on in the winter.

Q. Is it possible that the ice might have been in the Hudson River on the 20th at 86th Street at 6 o'clock in the morning and not there at 3

5274 o'clock in the afternoon? A. Yes, that could be possible with the change of the tide.

Q. How far will a log float in a change of the tide? A. You mean the whole tide?

Q. Yes. A. I do not know; I never had any experience on anything like that.

Q. Of course, it is ice that I am referring to. A. Of course, ice, where there isn't much ice it will go quite a ways, if you have a strong tide; but if the ice is any ways heavy it will hardly

move at all. If it is thin it will go on up with the tide. 5275

Q. The less ice there is the faster it moves? A. Surely.

Q. Even with a strong tide? A. Yes, sir.

Q. The water cuts under it, that is the reason it does not move? A. No, it goes right along with the tide.

Q. It does float with the tide? A. Yes.

Q. Is it not a fact that thick ice just seems to move slower when the river is full of ice? A. No, with the thin ice there is nothing to obstruct it at all, and with a lot of ice it is all jammed together. 5276

Q. What is the current in the North River? A. That depends wholly on the wind.

Q. The tide runs at a certain speed, doesn't it, usually? A. It depends on the wind. If you have got a good northwest wind you do not get any flood tide at all hardly, but take a southwest wind, and it will run up there at an average of 2½ knots, 2 knots anyhow.

Q. The Hudson River is a fresh water stream, it empties considerable fresh water into the Bay? A. Yes, up above.

Q. And the water comes down here? A. Yes, fresh water I believe starts in around Newburg. 5277

Q. It has some current regardless of the tide, doesn't it? A. I do not quite get your drift of that.

Q. Well, all right.

The Court: Anything else?

Q. You did not observe any ice last winter? A. Last winter, oh, yes, sir.

5278 Q. When did you first notice any ice? A. It was long after that, I know; somewhere around the latter part of January or the first of February.

Q. It did not inconvenience you any, did it? A. Well, it does when it gets bad.

Mr. Axtell: That is all.

Re-direct examination by Mr. Matteson:

Q. Did you ever know, captain, of ice going up the river on one tide when the wind or conditions were right, and not coming down on the next? A. Up the North River?

5279

Q. Yes. A. Oh, yes, a southwest wind and a flood tide will drive that ice up pretty well, if there isn't much of it, and coming back on the ebb tide she will stay in behind Fort Washington Point sometimes; it hangs in there. There is a whole lot of it that will not come down the river on the next tide.

Mr. Matteson: That is all.

5280 (Witness excused.)

ALBERT F. SCHMIDT, recalled, testified as follows:

By Mr. Matteson:

Q. Did you find entries in December? A. Yes; the man that took my place has ice on the 27th of December.

Q. On the 27th? A. Yes, sir. 5281

Mr. Axtell: I thought I was examining the witness.

The Court: You were.

Cross examination by Mr. Axtell (continued):

Q. Will you just show me the entry? A. (Witness shows book to counsel.)

Q. Is that the only entry you find? A. There is some back further, I guess.

Q. This says "Heavy ice on the 27th." A. Yes, sir. 5282

Q. What does "heavy ice" mean in the parlance of you river men? A. I do not know what that man might mean.

Q. What does it mean to you? A. Well, heavy ice means anything over 6 inches, in my opinion. What that man's opinion is, I do not know.

Q. Will you give us your opinion? A. I gave that; anything over 6 inches.

Q. Do you find other dates You said there were some other dates. A. Yes, sir. That is the same man.

Q. On the 28th it just says ice; is that the only reference, those two? A. 27th is the first. I guess as you go along you will find that the day man has got some more later. That is mine on there. (Indicating) There is the day man's. 5283

Q. December 30th, is that right? A. Yes, sir.

Q. Is there an entry there? I did not see it. A. Yes.

Q. Oh, yes, "Delayed by heavy ice on December 30th"? A. Yes, sir.

Q. Where was that boat? A. He has it on his log.

A. Schmidt—for Pet.—Recalled—Direct—(Cross

Q. Yonkers, Federal Anthracite? A. Yes, sir.

Q. The boat was on the 27th at J. C. Drydock, that is Jersey City, isn't it? A. I guess it is.

Q. National Pier, Pennsylvania Railroad, whatever that means, and 30th Street, North River, and then it says Penn's Dock, or something like that, at Yonkers, and then Port 1.8, there is nothing to indicate just where he observed the ice, probably it was Yonkers? A. I could not say where he observed it.

Q. All the way up there. Would you make note of ice unless it in some way affected the navigation of your boat? A. Why, yes, if it delays us any we do.

Q. That is the only case? A. Yes.

Q. For making an entry? A. Yes.

Q. If it might interfere with a vessel you were towing or damage something or delay you, or something of that character? A. Yes, sir.

Q. It takes a good deal of ice to do damage to a tug? A. That all depends.

Q. Or to slow it up? A. That all depends on the age of the boat.

Q. I mean to say to interfere with the navigation, it takes a good deal of ice? A. No, it all depends on the bow of the boat and the condition of the boat.

Mr. Axtell: That is all.

Mr. Harrison: That is all.

(Witness excused.)

FRANK C. WEITZMAN, called as a witness on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Matteson:

Q. Mr. Weitzman, what is your occupation? A. Photographer.

Q. By whom are you employed? A. W. J. Drummond.

Q. Did you make some photographs of the "Linseed King" at the request of my office in December, 1926? A. I did, December, 1927.

Q. December, 1926? A. December, 1926, yes, sir.

Q. I show you this photograph and ask you if you will tell me where and when that photograph was made? A. That photograph was made on December 22, 1926, at Riverdale, I believe the name is.

Q. Riverdale? A. Riverdale; I went up on the lighter.

Q. Is that when the "Linseed King" was raised out of the water? A. It is.

Q. By the derrick? A. It is.

Q. Is Riverdale up almost to the Yonkers line? A. Really, I do not know just where it is. I boarded, I think it was the Chapman Brothers, at the Battery, and went up with the lighter.

Q. And this photograph shows conditions at that point at that time, does it? A. It does.

Mr. Matteson: I offer it in evidence.

Mr. Axtell: No objection.

The Court: Received.

(The same was received in evidence and marked Petitioner's Exhibit 20 of this date.)

5290 Q. Here is another photograph. Will you tell us the same about that? A. That was made at the same time at the same place, in fact, I believe it was just a few minutes before the other one was made, since the "Linseed King" is more out of the water there than it is here.

Q. More out in the first one than in the second one? A. Yes.

Mr. Matteson: I will offer that in evidence.

Mr. Axtell: No objection.

The Court: Received.

5291

(The same was received in evidence and marked Petitioner's Exhibit 21 of this date.)

Q. Can you tell us whether the "Linseed King," at the time she was raised, as indicated in this picture, was lying inside the end of the pier or outside? A. Yes, it was inside the end.

Q. And these conditions that are shown there refer to conditions inside the pier, is that right? A. It is.

Q. Did you notice ice there at that time? A.

5292 Why, just under the lee of the pier there was some ice lying around the water's edge. We come up the river without encountering any ice until we got into shore.

Q. How was it out in the center of the river there? A. Practically clear.

Q. And after you had made the picture at Riverdale, where did you go from there? A. I believe it was the pier at 99th Street, or somewhere there, I believe, where they placed the "Linseed King" up on the pier.

Q. 95th Street, was it? A. I guess it was 95th Street; that is where it was. 5293

Q. Did you come down on the Chapman Brothers? A. I did.

Q. I show you this photograph and ask you to tell me where and when that was taken? A. That photograph was made on the 22nd day of December, 1926, and is a view looking west showing the top of the "Linseed King," and also the pier on which it is lying, and a general panorama view of the river and the Jersey shore.

Mr. Matteson: I offer that in evidence. 5294
Mr. Axtell: No objection.
The Court: Received.

(The same was received in evidence and marked Petitioner's Exhibit 22 of this date.)

Q. I show you this second photograph and ask you about that one. A. That photograph was made on that pier at West 95th Street showing the "Linseed King" lying on the pier, and showing the stack of life preservers that were removed from the "Linseed King." It shows the port side of the "Linseed King." 5295

Mr. Matteson: I offer that in evidence.
Mr. Axtell: No objection.
The Court: Received.

(The same was received in evidence and marked Petitioner's Exhibit 23 of this date.)

Q. I show you this third picture and ask you about that. A. That is an inside view of the "Lin-

5296 seed King" looking forward, I believe, yes, looking forward. This was made on December 22, 1926, on the pier at West 95th Street.

Mr. Matteson: I offer that in evidence.

Mr. Axtell: No objection.

The Court: Received.

(The same was received in evidence and marked Petitioner's Exhibit 24 of this date.)

Q. All these pictures then were made on the
5297 same day? A. They were.

Q. And the pictures at Riverdale, do you know about what hour they were made? A. Well, we left at something about 9 o'clock from the Battery, and I guess I started to photograph somewhere about 11 o'clock, somewhere between 10:30 and 11:30 in that day.

Q. How much later were the other photographs taken? A. It took us about an hour to come down, I suppose it is more than two hours to get the boat up on the deck of the lighter and back down there; then it would be something about 2
5298 o'clock, or thereabouts, that I started to photograph on the pier at 95th Street.

Q. Then it was not more than three hours difference in time between the time the pictures were taken at Riverdale and the time they were taken at 95th Street? A. I do not believe it was that much time.

Q. What was the condition of the river with respect to ice at 95th Street? A. Why, it was very clear of ice.

Q. No ice in sight? A. No floating ice, no,

sir. There was a little ring around some of the piles. 5299

Q. And this photograph, Exhibit 24, shows some ice on the cabin floor; is that ice that was in the boat when it was raised? A. Well, there was some ice around the boat when they were raising it. A. As I said, she was just inside the end of the pier and there was some ice under the lee of the pier. How that got in there, I do not know.

By Mr. Axtell:

Q. You do not know whether that ice came through the hole when it hit her or not, do you? A. No. 5300

(Witness excused.)

JOSEPH A. MCHALE, called as a witness on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Englar:

Q. Mr. McHale, how old are you? A. 41. 5301

Q. What is your position? A. Dock superintendent.

Q. For Spencer Kellogg & Sons? A. Yes, sir.

Q. How long have you held that position? A. Going on 7 years.

Q. It has been testified in this case that extra men are employed at the plant when you have a seed ship in, and those men work under your supervision, do they? A. Yes, sir.

5302 Q. Do you employ them? A. Well, they ask me how many men we need for the ship, and I tell the time office, and after they come down on the dock and are hired, they are under my supervision.

Q. You are the man who decides how many men are needed? A. Yes, sir.

Q. Now, will you tell us about how many men you would ordinarily require when you had a steamship in in addition to your regular force? A. Between 45 and 50.

Q. And in some instances would it run above
5303 that? A. Oh, yes.

Q. Have you brought over at my request some record sheets that you have showing just when you had seed ships in and how many men worked on each day in connection with them? A. Yes, sir.

Mr. Englar: There is a great mass of those sheets, and I find that they were not brought up from the office. I had better send down and have them brought up. I have had made an abstract of just what those sheets show, starting in August and going down to after this accident, and I
5304 will give my friend an opportunity to check those over with the originals.

Q. Assuming that this summary is a correct statement or a correct abstract from your records which you brought over to my office, does that show exactly when and in what numbers you employed extra men in connection with the unloading of ships? A. Yes, sir.

Mr. Englar: I will ask that that be marked for identification.

(The same was marked Petitioner's Exhibit 25 for Identification of this date.) 5305

Q. When you had a considerable number of extra men coming over to work on a ship, or in connection with a ship, did those men and your regular men all come over on the same trip of the boat? A. Why, some of those men came over on the first trip. For instance, the captain would make a trip, he would make a trip at 6:30 on the regular days, and the days that a seed ship came in he would make an earlier trip to take our regular men, and then he would go back and get the men answering the advertisement for men for the seed ship. 5306

Q. Was that a general practice or was that a rare occurrence? A. That happened mostly whenever we had seed ships in; that was the general practice.

Q. Was anything said by you or to you on this particular occasion, December 20th, about an extra trip? A. Yes, sir.

Q. By whom? A. Mr. Stover.

Q. What did he say to you? A. Why, Sunday morning we expected the steamship "Tercero" to dock there, and it was supposed to come in at 8 o'clock in the morning. I arrived there about quarter to eight, and the boat wasn't in sight; so I called Mr. Stover and told him the ship was not around, and I could not see it down the river. He told me to call the Dalzell Towing Company up and find out what they knew about it. I called the Dalzell Towing Company up about quarter after nine and they told me the boat was at quarantine at about 9 o'clock that morning, and would arrive at our piers between half past eleven 5307

5308 and twelve o'clock. Then I told them I had some men there waiting to go to work on that boat, and I did not think I needed to keep them there, and I wanted to send them away, and he said, all right, to send those men back to New York and have them report at the dock tomorroy morning at 6 o'clock, and have me to tell Mr. Rohweder when I saw him at 5 o'clock Sunday evening about it. That would be that same night.

Q. Did you tell Capt. Rohweder ? A. Yes, sir, I saw him at 5 o'clock that same Sunday evening, and I told him to make an extra trip at 6 o'clock

5309 in the morning and pick up the men that were hired on Saturday.

Q. Were you at the plant on Sunday night? A. Yes, sir.

Q. All night? A. Yes, sir.

Q. Work was being done on the discharging of that ship? A. Yes; we started that ship shortly before 12 o'clock Sunday.

Q. You mean 12 o'clock noon? A. Yes, sir.

Q. And you continued all through the night? A. Yes, sir.

Q. Did you see Capt. Rohweder Monday morning? A. Yes, sir.

5310 Q. About what time? A. Why, it was, he came down shortly before 6, maybe five minutes to six, somewhere in that neighborhood.

Q. He came on the dock? A. He came up to my office and wanted to know if, he wanted to understand me right if the men he was to pick up was the men that was hired on the Saturday previous.

Q. Before you get into that, had you had any conversation with him the evening before? A.

Yes, I saw him Sunday night and told him about 5311
this.

Q. You told him about this 6 o'clock trip? A. Yes, sir.

Q. You say he came into your office about five minutes to six? A. About that time; shortly before six o'clock.

Q. And did he go from your office to the launch? A. Well, I guess he did; I am not sure about that.

Q. Did you hear the launch start out? A. Why, yes, I did.

The Court: Is this the morning of the 5312
accident?

Mr. Englar: The morning of the accident, yes, sir.

Q. Can you give us the time when he actually left the dock on the Jersey side to start for New York? A. Why, I heard the motor of the "Linseed King" starting out, I guess,—well, it was between 8 and 10 minutes after 6 that morning.

Q. Have you a clock in your office? A. Yes, right over the washstand.

Q. Did you have occasion to keep in touch with what time it was? A. That morning I was 5313
anxious to know whether the captain was carrying out the orders that Mr. Stover issued to me, and I watched the time so that I could see if he was starting out from the pier at about 6 o'clock. I thought he was supposed to make the trip at 6 o'clock.

Q. When you engaged these extra men on these occasions did you make any agreement with them as to what sort of work they were to do? A. No; just hired out as laborers.

5314 Q. Was there any way of determining, before the men actually started to work, what particular work any particular man would do when the time came? A. No.

Q. That is to say, there would be no way to know whether he was to work on shore or on the ship? A. No, no way to tell. When we wanted men to work on the pier I just merely took them off the ship and put them on the different docks on the pier.

Q. I do not recall whether you told us what time you got to the plant on Sunday. A. About
5315 quarter to eight Sunday morning; around that time. Between quarter and ten minutes to eight.

Q. Can you see the river from your office? A. My office is right alongside the river; I can look out the window on to the river.

Q. Did you see any ice in the river on Sunday? A. No, sir.

Q. Had you seen any ice in the river on any previous day? A. No, sir.

Q. There has been some testimony that there was a siphon kept on the bulkhead near the launch to be used in pumping the launch out; do you know of any such practice? A. No, sir.

5316 Q. Did you ever see a siphon kept there for that purpose? A. No, sir.

Q. One witness said that it was a pump, apparently a double action pump, with two plungers kept on the pier to pump the boat out; did you see any such pump? A. There is a pump on the pier to pump oil into the tanks about 300 feet away from the boat, but not near the boat, and it couldn't pump any water from the boat.

Q. It is used for pumping oil? A. Yes, sir.

Q. Have you ever been given any orders as to supplying a man to the captain of the boat? A. Yes, sir. 5317

Q. By whom? A. Mr. Stover.

Q. What orders did he give you? A. Mr. Stover told me whenever there was a steamship in, to give a man to the captain to help him out and keep those men inside the boat.

Q. Do you know a man named Arthur Klahre? A. Yes, sir.

Q. Did he ever run the boat at any time? A. Well, when I was night superintendent he worked there for a while.

Q. That was prior to what time? A. That was around 1925. 5318

Q. Did he ever run the boat during the year 1926, to your knowledge? A. No, sir.

Q. Could he run her often without your knowing it? A. I do not think so; not in the day time.

Q. Were you there at night at all? A. Why, yes, I have been around the plant at nights.

Q. Could he have run her at night as a regular practice, or frequently, without your knowing it? A. Not when I would be there, no.

Q. When you had a seed ship in did you often stay all night, as you did on this occasion? A. Well, not often; I have sometimes, on several occasions, whenever they were in a hurry to get the ship out, or something like that. 5319

Q. Your testimony then gets down to this, during the year 1926, so far as your knowledge goes, he did not run the boat? A. No, he did not run the boat in 1926.

Mr. Englar: That is all.

5320 Cross examination by Mr. Axtell:

Q. Did you work on the "Tercero" on the 19th, Sunday? A. Yes, sir.

Q. Were you unloading her? A. Yes, sir.

Q. Is Mr. Nelson in court? A. No, sir, he is not.

Q. Did you see him today? A. There are two Nelsons in our plant.

Q. I mean the man that keeps your time work. A. No, he is sick.

Q. Did you hire these men that have been—

5321 some of them went over there on Saturday to get jobs,—did you hire them? A. No, Mr. Nelson hired them.

Q. You do not see them personally? A. I seen them Sunday morning.

Mr. Englar: By the way, we have brought up those tags; what these men got was a piece torn off the card; we have the other end. Those are available.

Mr. Axtell: It gives the names, does it not?

Mr. Englar: Yes, I think it gives the

5322 name.

Q. Did you see Mr. Lang, the electrician that works under Streuli, on Sunday, the day before the accident? A. Yes, sir.

Q. And did he tell you there was ice in the river? A. No, sir.

Q. He didn't say anything about it? A. No, sir.

Q. Do you have any system by which the boatmen would report to you, or to Mr. Stover, or each

other, when there was ice or not? A. Why, it was an understood fact if there was any ice in the river, at the first sign of any ice the boat would be taken out of the water, and it was to be reported to Mr. Stover, not directly to me, but to Mr. Stover.

Q. You heard the testimony of Capt. Rohweder to the effect that he would not lay the boat up without orders? A. I was not here; not when Capt. Rohweder was on the stand.

Q. There was no question but what he was told to be there Monday morning to bring these men over? A. I told Capt. Rohweder to be there Monday morning. 5824

Q. You had not seen any ice up to that time? A. No, sir; not on the Jersey side.

Q. You had not seen any ice anywhere in the river up to that time, had you? A. No, sir.

Q. Capt. Rohweder began work a couple of months before that? A. A few months previous.

Q. The year before do you remember the boat ran up to January 5th? A. That I could not tell you; I have no definite knowledge.

Q. Mr. Stover said that. A. I do not know.

Q. You would assume it was correct if Mr. Stover said so? A. Yes. 5825

Q. The reports we have had this morning show that there was ice in the river on the 29th of December, 1925? A. That I could not say.

Q. How much ice do you consider dangerous in the navigation of the "Linseed King"? A. I do not know; I am not an expert. I certainly have no knowledge of what would damage the "Linseed King."

Q. You did say she was supposed to be laid up

5326 when there was ice enough; would you? A. That was generaly understood, yes, sir.

Q. Anybody ought to know that much? A. I would imagine so.

Q. You didn't lay her up just because you didn't know the ice was there, is that it? A. I do not know anything about it.

Q. You do not accept personal responsibility for the fact she was running, do you? A. No, sir.

Q. But you would not have laid her up anyway from anything you had seen that year? A. Not

5327 up to that time, no.

Q. You would not know when ice did come down the river, would you? A. No, sir.

Q. Did you know that there had been freezing weather earlier that winter? A. I knew we had cold weather.

Q. Just look this over and see if that refreshes your recollection about the weather conditions last year; over to the right you will see the check marks to indicate the minimum and maximum mean? A. Yes.

Q. And you see it got warmer there later, didn't it? A. Yes, a few degrees.

5328 Q. And you have been over there, you said, seven or eight years? A. Going on seven years.

Q. You have been around New York Harbor all your life, more or less? A. No, no; about 18 years.

Q. That is quite a while. I suppose you have observed that there is usually ice down here sometime during the winter? A. Well, sometime during the winter.

Mr. Englar: Your Honor, just a moment, Mr. Axtell, I do not like to object

because it gives the impression we are trying to conceal something, but I have not put this witness on as an expert on ice conditions or running the boat, and I submit this is not proper cross-examination. 5329

The Court: Yes; I suggest that you cross-examine him respecting the things he was questioned about on direct.

Mr. Axtell: Good gracious, this man is one of the superintendents of this company; knowledge to him of ice conditions or of negligence to make observations or investigations is negligence of the company itself. He is the assistant to Mr. Stover. I am concerned with that question. 5330

The Court: Well, proceed then, and confine yourself to the direct examination.

Mr. Axtell: We know there was ice, everybody knows that, but the question is how much effort these men made to find it out.

Q. You had reason to believe that ice would come down the Hudson River sometime? A. Yes, sir, sometime.

Q. And you did not figure on just running the boat when there wasn't ice and not running her when there was ice, did you? A. The way it was supposed to be, the boat was to come out of there when there was ice in the river. 5331

Q. You wouldn't wait until the ice sunk the boat every year to take it out? A. We would have to wait until the ice came down, just like this year.

Q. It might come down over night, and they might not know of its being there, and your boat

5232 go out at 6 o'clock in the morning before you could see it? A. That is possible.

Q. Did you make any provision about that to find out what the ice conditions were at Yonkers, for instance? A. I have nothing to do with that, Mr. Axtell.

Q. So far as you know, nothing was done in that direction? A. I do not know whether there was or not.

Q. It was important to get men over there to unload the boat? A. It was important to get our work done, yes, sir.

5233 Q. There were a lot of hungry men over there looking for jobs just before Christmas? A. I would not say that; labor was sort of scarce at that time.

Q. You did not take all that was offered, did you? A. What is that?

Q. You did not take all the men that offered themselves? A. I believe we did.

Q. You could not get them in Jersey? A. Oh, yes, we can get about 25 per cent. of our labor over there.

Q. You could have sent down to some employment agency and gotten them? A. I do not be-

5234 lieve in doing business with employment agencies.

Q. You would have had to pay about 60 cents an hour if you had gotten them through an employment agency? A. No, we could have gotten them through an employment agency for the same price we are paying now, and at that time too.

Q. Other people were paying more than that for longshore labor? A. They were not doing longshore labor.

Q. Were not these men working on unloading boats? A. They were working all around the

plant on different propositions, loading cars, loading boats, unloading cars, and so forth.

Q. You took on the extra men because the boat was there? A. We took on extra men because the boat was there.

Q. Then the extra men on this list would fairly represent the number of extra men required in one day? A. Some of those men would work on that boat, maybe one hour on the boat, and we would take them off and work them nine hours in the extracting plant; we had them working all around the plant on different jobs.

Q. I notice you had 62 on one shift and 59 on another for the 20th? A. Yes, sir.

Q. And 60 on each shift for the 21st, and so on. That means 120 men extra, doesn't it, in a day? A. That is for the two shifts, yes, sir.

Q. And those men had to ride on this boat, didn't they? A. Well, they didn't on December 20th; they came around the ferry.

Q. I should say not. How do they get over there now? A. Come around the ferry.

Q. When did you lay the boat up this year? A. I do not know if the boat is laid up now.

Q. You knew there was ice in the river this year? A. I do not know.

Q. It is a much bigger boat now than the other one, isn't it? A. I do not know; I am no expert on boats.

Q. You do not know whether it is any bigger or not? A. No.

Mr. Englar: Just a moment. I object to going into the new boat. I have objected all along.

5338 The Court: Sustained.

Mr. Axtell: Of course, I have a right to question this witness's knowledge and his credibility. He says he does not know the difference between the size of these boats.

The Witness: That is right.

Q. That is what you say? A. Yes, sir; I did not measure them.

Q. You never rode on the new boat? A. Yes, I did.

Q. Don't you know she is twice as big as the old one?

5339

Mr. Englar: I object to that.

The Court: Sustain the objection.

Q. Have you increased your plant any since 1926, December? A. No.

Q. Are you employing any more men now than then? A. No, sir.

Q. About the same number leave on this side as left at that time? A. About the same number.

Q. That relates to the steady employees as well as the extra men? A. I would imagine so, yes, sir.

Q. How many men were you carrying across

5340 that were regular employees in December, 1926? A. You mean from the dock?

Q. Yes, across the river, back and forth, how many? A. About 15 from the dock.

Q. 15 a trip? A. 15 men from the pier was the regular men at that time. Of course, I do not know what is around the plant.

Q. There were more than 15 dead men that were regular employees in this case on that one trip alone, weren't there? A. No, there wasn't from the dock.

Mr. Englar: I do not think you under- 5341
stand the witness.

Mr. Axtell: Maybe he does not understand me.

Mr. Englar: I do not think you understand him. He means men that are employed under him.

Q. You meant just the men under your supervision? A. Yes, sir.

Q. I beg your pardon, I misunderstood you. You do not know how many there were that rode on the boat, regular employees? A. Why, between 35 and 40, I imagine. 5342

Q. Besides your men? A. I mean when there wouldn't be no steamship in.

Q. Don't you know that list furnished here shows 100-odd, or 125 employes? A. I am talking about men from the pier.

Q. I am talking about the whole factory. A. I could not answer that.

Q. If you had 120 men, 120 extra men, and you had 120 regular men, that made 240 men to ride every day on that boat both ways, didn't it? A. That I couldn't tell you.

Q. Did you ever have any system of coming 5343
over on this side to select your men? A. I never was over to select any men.

Q. You made them come over there, all of them? A. Yes.

Q. These men never were really hired until they started to work, that is, if you got them to go over and there wasn't any ship in at the time, or any work for them to do, you did not pay them any money? A. No, not until they started to work.

5344 Q. So the actual contract of employment began when they started to work? A. Yes, sir.

Mr. Englar: I think that is a question of law for the Court to pass upon.

The Court: I think we ought to know whether they were employed when they came over, whether they were employed when they actually went to work or whether they were employed when they came over on the boat.

Q. These other men were all working by the
5345 hour? A. Which other men?

Q. Everybody in the plant punches time clocks and gets paid by the hour for their work? A. Yes, sir.

Q. You do not pay any overtime? A. Oh, yes, we do.

Q. You do? A. Yes.

Q. And a man gets at the end of the week paid for as many hours as he has put in; he gets paid for that much work, isn't that true? A. That is right.

Q. Is it true that the boat was furnished as a
5346 matter of convenience for getting the labor back and forth and having the men ready to do the work when it was needed to be done? A. Why, yes, I imagine it was convenient to get them in.

Q. It was important to you to get your ship unloaded expeditiously, have a supply of labor there when you wanted it, wasn't it? A. Yes.

Q. Mr. Lang in his testimony said there was ice in the river Sunday, but that he went across; you say there wasn't? A. Not on the Jersey side; I didn't see any there.

Q. Can you see across the river? A. Well, yes, I could in the day time. 5347

Q. Were you looking for ice? A. No, not for ice.

Q. It might have been there then? A. Not in the middle of the river. It may be along the shore, shore ice.

Q. If you weren't looking for ice how can you be sure there wasn't any ice there? A. Well, when we are docking ships there at the pier and there is ice along the river we have a lot of difficulty to get them in. Naturally, I would know whether there was ice in the river that day or not, because we had a ship come in, and we had no difficulty in docking that ship. 5348

Q. That sounds reasonable for the Jersey side. You might have an opportunity to observe it there, and you did occasionally? A. That is right.

Q. On the other hand, there might have been some ice, not enough to interfere with your operation, and still you would not think much about it? A. Well, Mr. Stover and I was on the roof around 3 o'clock Sunday afternoon, and I told Mr. Stover, "This is a mighty fine afternoon for this time of the year," and he said, "Yes, it is." 5349 In the morning it was kind of chilly, and there was no ice in the river at that time.

Q. You had in mind, you were thinking there might be some ice? A. No, I did not have in mind about the ice at the time.

By the Court:

Q. What were you up on the roof for? A. I

5350 came off the ship that way; we have a gangway that way.

Mr. Axtell: That is all.

Re-direct examination by Mr. Englar:

Q. This being up on the roof of the pier, was that something unusual with you? A. No, sir.

Q. Is that your regular way of going off and on the ships? A. Why, we generally have a gangway from the roof on to the ship.

5351 Q. Now, you said that the men were not employed until they got over to your side? A. That is right.

Q. Now, on this occasion, on the Saturday and Sunday preceding this accident, did you employ any men who did not work that day? A. Yes, sir.

Q. And when were they told to come back? A. They were told to come back Sunday morning.

Q. At what time? A. Well, be there at 7 o'clock; that is, 6:30 on the New York side.

Q. And be at the plant at— A. Be at the plant at 7 o'clock.

Q. That was on Sunday? A. Yes, sir.

5352 Q. Did you tell them to come back again Monday? A. Yes, sir.

Q. What time did you tell them to come back Monday? A. 6 o'clock.

Q. From the New York side? A. Yes, sir.

Q. Did you see this boat coming in and going out frequently? A. Yes, sir.

Q. When you didn't have a seed ship in can you give us an estimate of the total number of regular employees that she carried, including not only your men but the men in the plant? If you

do not know, why, just say so. A. I could give you an idea. 5353

Q. About how many? A. About 40 men, 45.

Q. That is on her first trip in the morning? A. Yes.

Q. That would be on the heaviest trip of the day? A. Yes.

Q. And I suppose the later trips in the day, she would carry much less than that? A. Yes, sir.

Mr. Englar: That is all.

The Court: How often did a seed ship come in? 5354

Mr. Englar: Well, we put in a list here, your Honor, which will show exactly when they came in during this particular period.

Re-cross examination by Mr. Axtell:

Q. Did these men, these regular men, have any special markings to indicate which were regular employees and which were just extra employees? A. Why, we gave them a low number, the regular employees were three hundreds.

Q. Were they supposed to wear that when they were away from the plant? A. That was optional with them. 5355

Q. It was pretty dark at 6 o'clock in the morning, wasn't it, on December 20th? A. It was dark, yes, sir.

Q. Did you send anybody over with the captain that morning, to sort these men out? A. Why, not that morning. On the next trip there was a man ready to go with him.

Q. Why didn't you send him that morning? A. It wasn't necessary; he was only supposed to pick up about 40 men.

5356 Q. How was he going to separate them? A. What do you mean separate them? They were already separated. The men he was supposed to pick up were the men hired on Saturday.

Q. You had your regular employees and you had your men that were engaged? A. Yes, sir.

Q. And you advertised in the paper for men? A. Not for that boat; the 6:30 trip.

Q. Didn't you think there might be a little confusion just before Christmas advertising in the paper for laborers, and all these men you had engaged, and all your regular men, to send a man
5357 over with this boat; didn't that advertisement say 6:30? A. 6:30, that was the other trip; he was to go over at 6 o'clock for that trip.

Q. He left the Jersey side at 6:10, you say? A. That is right. He was supposed to leave at 6 o'clock. He might have had difficulty in starting his engine.

Q. He didn't get off at 6 o'clock? A. No, sir; it was about 8 or 10 minutes after 6 o'clock.

Q. So he could not get over there by 6 o'clock to get the extra men over that were to appear there at that time? A. It is only a ride of about 7 minutes across there.

5358 Q. Did you tell those men to come down promptly at 6 o'clock and not a minute before? A. He was ordered out at 6 o'clock, the boat was to leave at 6.

Q. You knew he went out late; why didn't you send another man along? A. Why should I?

Q. Didn't he need somebody? A. Not on that trip.

Q. You didn't think so? A. I do not think he needed a man on any trip; I never saw him come

over when there were more than 60 aboard at any time. 5359

Q. You never did? A. I never did.

Q. You looked the other way if you saw him coming with that many? You knew 60 was a load, did you not? A. Well, I do not.

Q. Don't you know when Medlicot was in charge you were never allowed to carry any such loads as this? A. Medlicot carried just as big loads as Mr. Stover did.

Q. They were too big, in any event, weren't they? A. I do not think so. Of course, I am not an expert on that.

Q. You think so now after hearing of this accident? A. No, I do not. 5360

Q. Then why didn't you fix the old boat up instead of getting a bigger one? A. I had nothing to do with that; it is none of my business.

Q. Did you ever ride on that boat when there were 60 men in her? A. Yes, sir.

Q. There was plenty of room in her? A. Plenty of room.

Q. Lots of room? A. Plenty.

Q. No trouble getting out of her in a hurry? A. I would not imagine so.

Q. Suppose you added one-third to the number that were there, or make it 50 per cent. more, rather, make it 90 altogether, would there be room enough? A. I never saw the boat with 90 persons on. 5361

Q. Do you remember the testimony of Mr. Lang, the electrician? A. No, sir.

Q. You did not read that? A. No, sir.

Q. He testified that he counted as many as 90 men on that boat. A. Mr. Lang on one occasion had about 90 men on the boat, and I

5362 would not let him go with it, and we called the police and had to take some of the men off before we would let him go.

Q. Mr. Aldrich admits there were 86 life preservers on. A. That wouldn't say they were supposed to carry 86 men.

Q. The only order was not to carry more men than there were life preservers, wasn't it? A. I do not know.

Q. You did not make any provisions for enforcing that order? A. I do not know anything about it.

5363 Q. You did not send a man along to help the Captain keep the boat from being overloaded? A. Yes, we sent a man along to make the men keep inside.

Q. To pack them in? A. No, we never packed them in; they were never supposed to be packed in.

Q. They packed themselves in? A. I do not know.

Q. Did not you just say you had to call the policemen to get them off? A. That was one evening.

Q. Did that indicate to you that it might re-
5364 quire an extra man to help the Captain handle them on some future occasion? A. No, sir.

Q. It did not? A. No, sir.

Q. I suppose sometimes it is necessary to get out of the boat on the dock and tie the boat up, isn't it? A. Yes, sir.

Q. Who did you send along to do that? A. Why, as a general rule one of the men coming over on the trip, one of the older men in the employ of the company would be on there, and he would handle it.

Q. You would have had to pay out a little more money for an extra man to do that regularly? A. That didn't have any consideration at all, extra labor. 5365

Q. Why didn't you put up a little gangway on the dock so you could line these men up and control them better? A. I had nothing to do with it.

Q. You said you were on the dock in charge? A. I was on our dock.

Q. Why did not you do it after that experience with the police? A. I know, but if you get a bunch of men down there and they won't do what you tell them to do, that is only one time, those men aren't there all the time. You find men in that line are kind of headstrong sometimes, as well as other lines, but that isn't an every-day occurrence. 5366

Q. You didn't consider it necessary to do anything about it; you thought that what you did was good enough? A. Well, if it happened again, I would get the Police Department out again to put them off if I had to, rather than let the boat go overloaded.

Q. You never saw 90 men on that boat? A. No, sir. 5367

Q. What would you have done about it if you had? A. What would I do about it?

Q. Yes. A. I do not know what I would do; I never saw it.

Q. You wouldn't do anything about it? A. Oh, yes, I would.

Q. You think 90 men would be too many? A. I didn't say it would be too many.

Q. Would you consider 86 to be too many? A. No.

5368 Q. You think 86 would be all right? A. Yes.

Q. But four more would be too many? A. I wouldn't say it was too many; I wouldn't say 86 were too many.

Q. How many were on her that morning when she sunk? A. I do not know.

Mr. Axtell: That is all.

Mr. Englar: That is all, Mr. McHale.

(Witness excused.)

MATTHEW CHARLES DINGLE, called as a witness on behalf of the petitioner, in rebuttal, being duly 5369 sworn, testified as follows:

Direct examination by Mr. Englar:

Q. Mr. Dingle, how old are you? A. 35.

Q. Are you the gentleman who has been referred to so frequently as "Marty"? A. Yes, sir.

Q. Is that what you are ordinarily called? A. That is what the boys generally call me.

Q. Now, when did you start to work for Spencer Kellogg & Sons? A. In 1923, May 21st.

Q. And you remained with them until what 5370 time? A. 1926, I believe it was October 11th.

Q. And during that period what work were you doing? A. Well, piloting the "Linseed King".

Q. Throughout the time that you were running her what do you say about her condition as to seaworthiness and tightness, stability, general good or bad condition? A. I have never——

Mr. Axtell: I object to that on the ground that the witness has not qualified.

Mr. Englar: Thank you, sir; I did overlook that.

Q. Mr. Dingle, just what experience have you 5371
had with boats, building and the running of them, or otherwise? A. I have been helping on the building of boats; I have been running to the ships carrying passengers.

Q. How long have you worked altogether at boat building? A. I worked for C. W. Clayton for six years.

Q. Building small wooden boats? A. Small wooden boats and hauling them out of the river.

Q. That is, storing them and repairing them? A. Storing them in the winter time and repairing them.

Q. What experience had you had operating 5372
boats prior to this work on the "Linseed King"? A. Running to the battleships, carrying passengers to the battleships.

Q. Did you carry passengers in any other trade? A. Once in a while taking a fishing party out.

Q. You did operate a boat taking fishing parties outside the Hook? A. Yes, sir.

Q. Is it fair to say for a good many years up to the time you left Spencer Kellogg you had been employed about boats, either building or running them? A. I worked ashore for a while.

Q. About how many years had you been work- 5373
ing on boats, would you say, altogether, up to October, 1926? A. I have been off and on the water since I am 14 years old. That is as near as I can give you; helping on boats and the like.

Q. Now, will you tell us in general what was the condition of the "Linseed King" while you were running her, as to strength and stability and tightness? A. For a 45-footer, which she was, from stem to stern, why, I have handled other 45-footers, and there wasn't any of them built as strong as that.

5374 Q. You would say she was very strongly built for a boat? A. Yes, sir.

Q. What do you say about her stability? Was she inclined to be tender or topheavy? A. No, she was steady.

Q. Did she leak? A. No, sir.

Q. Now, there has been a good deal of testimony about her leaking at one time or another. Did she ever have any leaks from her piping or anything of that sort, stuffing? A. If there was stuffing which was leaking, I would fix it right away as soon as I seen it.

5375 Q. Did you have to drydock her? Would you have to drydock one of these boats to tighten the stuffing box? A. Not on the "Linseed King", for the stuffing box was on the inside and the stern bearing was on the outside.

Q. Could you tighten the stuffing box from the inside? A. Yes, sir.

Q. Is that a thing that has to be done from time to time on any boat? A. Sometimes it will last two or three weeks; sometimes it will last a month, and generally you will see it starting to drip, and naturally when you find something like that you simply take a wrench and tighten

5376 it up a little bit.

Q. Did you ever know of the boat to leak through the hull anywhere? A. No, sir.

Q. Now, there has been some testimony that there was a siphon kept down on the pier, the bulkhead near where this boat landed, for the purpose of keeping her siphoned out; did you ever know of anything of the sort? A. To tell the honest truth, I really do not know what one looks like.

Q. You never used one? A. I never had one down there outside of a steam coil that we put

in there in the fall and in the spring of the year. 5377
There was a line of pipe, a pipe line from there that we used to pull through the cabin to stick up against the engine, a steam coil.

Q. That was the radiator? A. That was connected with the steam plant on the Jersey shore.

Q. What was the purpose of that radiator? A. The radiator we had was right alongside the motor. Some nights it would get a little cold, we would have a cold spell, for instance, and just the same as an automobile in a cold spell, it might be a little hard to start her in the morning, and that was in there to make it easier starting for me, when it laid over there Saturday 5378
and Sunday.

Q. One witness said there was a double action pump kept there to pump the boat out. A. I never seen one.

Q. Did you ever use anything in pumping this boat out except her own pumping equipment? A. Nothing except her own pump.

Q. Some testimony was given by a witness, Fred Lang, about some life preservers in a locker forward. Will you tell us about those? A. There was a few before I left that I put in that was discards.

Q. And was there any lock on that locker? 5379
A. Yes, sir.

Q. Did you keep it locked? A. I kept my tools in there; that is the reason there was a lock on there.

Q. Did you keep that locker locked? A. Yes, sir.

Q. Were those life preservers in there counted as among those fit for use on the boat? A. No, sir. I put them in there for the simple reason that some time or other, in case I lost a life

5380 preserver, I was going to see if I could not have them recovered. They were the regular life preservers but the canvas on them was rotten.

Q. Some testimony has been given by a man named Dressler who operated the boat at one time or certain times; do you know him? A. Yes, sir.

Q. When did he come to the plant? A. I believe he was there when I first came there.

Q. Was he operating the boat at the time you first came there? A. No, sir.

Q. Do you know who ever broke him in to run the boat? A. Yes, sir; I did.

5381 Q. Did you give him any instructions about it? A. Yes, sir.

Q. What did you tell him? A. I told him, I showed him how to operate it, and also told him that there was 86 life preservers on board of this boat, but I would advise him not to carry any more than 65 men.

Q. There has been some testimony about the clutch on this boat. One of the witnesses has said that it was very difficult to operate the boat because the clutch was bad; what do you know about that? A. As long as I operated it I have

5382 never found any difficulty with the clutch.

Q. Does it require some skill to operate the clutch on a boat like that? A. If a man intends to come into the dock full speed ahead and expects to stop any motorboat within 5 feet, there is no clutch made that will do such a thing.

Q. In other words, you have not any brake on these boats? A. There is no brake like on an automobile, because the reverse gear will not hold when you speed your motor up too fast.

Q. There has been some testimony given about

one occasion when the captain of this boat or the operator of this boat picked up a chair that floated away from the yacht "Delphine"; was that yourself? A. Yes, sir. 5383

Q. Do you remember the occasion? A. Yes, sir.

Q. When was that with reference to the night the "Delphine" sank? A. It was the morning after that night; I believe it was the 22nd of September, I believe.

Q. You needn't fix the date. We have that. But I mean how long had the boat, the "Delphine", been sunk when you picked up the chair? A. I should judge she went down in the night, and I believe it must have been, I picked the chair up about half past six in the morning. 5384

Q. What I am driving at is this: Are you sure that this was the first morning that the "Delphine" had been sunk there? A. Yes, sir.

Q. Could you see her spars as you came along? A. As I came over there I couldn't imagine what it was lying at the head of that dock.

Q. She was sunk at the place where you usually docked your boat? A. Yes, sir.

Q. And then after you loaded up your men and were on your way back to Jersey you picked up this chair? A. Yes, sir; I was about 100 feet away from the "Delphine". 5385

Q. Now, during the time you were on the boat operating her, Mr. Dingle, tell us about how many men it was customary for you to carry. A. When a seed ship was in and when a seed ship wasn't in?

Q. Yes, both. A. When a seed ship was in I used to operate two trips. I used to come in early in the morning, at 6 o'clock, leave the dock about five minutes after six, and pick up about

5386 35 or 40 men. Some press men would be there early, most of them used to get there about ten minutes after six; by me traveling back and forth I took notice of that, and I would pick some press men up and some dock laborers, and there was extra help, and that would be about 40 men. Then I would come back and make my regular trip.

Q. That is, when there was a seed ship in? A. When there was a seed ship in. When there was no seed ship in, I had about, all told about 40 to 45 men; that was press men and dock laborers.

5387 Q. The employees who rode regularly on that early morning trip? A. 40 to 45 men.

By the Court:

Q. How many did you carry when a seed ship was in? I do not think I quite understood you. A. When a seed ship was in, it was always customary to make two trips.

Q. Each trip comprising about 45 men? A. About; well, you could figure about. Sometimes you had 50, sometimes 60, sometimes you had less.

5388 Mr. Englar: What he said, your Honor, was he usually carried about 40 or 45 men on the first trip, the extra trip, and then perhaps 60 on the next trip.

By Mr. Englar:

Q. Of course, you did not always get a large number of extra men even when there was a seed ship in, did you? A. No, sir; we would also make a trip around 10:30 in the morning, when they

would want more men and they could not get them. There was half the time they couldn't get the amount of men they were looking for. 5389

Q. Was there a top on this boat when you first took charge of it? A. Yes, sir.

Q. Was the pilothouse on there at that time? A. No, sir.

Q. The pilothouse was put on afterwards? A. The pilothouse was put on a year later, I think, 1925, I believe the pilothouse was put in there.

Q. Were there any changes made after that in the type of the boat until the windows were put in? A. No, sir; the cabin stood the same.

Q. There was no change in the cabin from the time the pilothouse was put in in 1925 until the windows were put in? A. No, sir. 5390

Q. And at the time the windows were put in was the height of the cabin changed at all? A. No, sir.

Q. Did you take any part in putting those windows in? A. I helped the carpenter when they first started the job, just before I left.

Q. The job was not finished when you left? A. Not quite, no, sir.

Q. But you had gone far enough to know just what sort of cabin she was going to have? A. Yes, sir. 5391

Q. With that sort of cabin on her, from your knowledge of this boat and your experience with boats generally, what do you say as to whether she would be seaworthy in ordinary weather conditions to carry 80 to 85 men across the North River, the Hudson River, up near Edgewater? A. You mean would she be able to carry them?

Q. Yes, was she seaworthy and fit to carry that many? A. I believe she would carry that many if you would put them on.

5392 Q. Do you think she would be topheavy or unstable with that many men on? A. No; for the simple reason, the more weight got in that boat, the better maybe she would ride.

Q. She was quite narrow in front up to a certain point, wasn't she? A. Up at the bow she was V-shaped.

Q. And after she got that thin part down in the water and began to submerge the wider part, you think she would have more stability? A. She was more safer.

Q. On the day that you picked up this chair did you have a heavy load? A. No, sir.

5393 Q. How was the weather, do you remember? A. I do not exactly know how the weather was, but it was a nice morning; I didn't see nothing wrong about the weather. I didn't see there was a sea or anything on this day; very little sea there unless a Day Line boat goes by, or something like that, or a heavy wind.

Q. Had you ever had any experience with the use of life preservers? A. On occasions where—one time I had experience with them.

Q. Just say whether you have or have not? A. Yes, I have.

5394 Q. Have you known of life preservers to be used without being put on with the straps over your arms? A. Yes, sir.

Q. And can it be used effectively in that way? A. Yes, sir.

Q. Did you know Arthur Klahre? A. Yes, sir.

Q. Did he operate this boat at any time during the year 1926? A. Not that I know of.

Q. Up until October of this year you were the day man operating the boat? A. Yes, sir.

Q. And you never knew of his operating her at any time? A. No, sir.

Q. If he were operating her at night during 5395
that period would you be likely to know it? A. Yes, sir, I would.

Q. He would turn over the boat to you in the morning? A. I would always ask—if I did not see the man who was in charge of the boat at night, which he always came down and spoke to me in the morning, and if he was operating the boat during that time, why, I would hear about it.

Mr. Englar: That is all.

Cross examination by Mr. Axtell:

5396

Q. What are you doing now, Mr. Dingle? A. At the present time I am chauffering.

Q. What were you doing last summer? A. Last summer?

Q. This last summer. A. I have been chauffering.

Q. Who for? A. Spencer Kellogg & Sons.

Q. Oh, you are working for them again? A. Yes, sir; you know that.

Q. You invited me in to——

The Court: He wants me to know it.
The Witness: Oh, I see. 5397

Q. Do you remember the night we were talking this thing over outside of the company's plant, there was a big smoker there? A. There was never no smoker there.

Q. You had a badge on that says "A good fellow", didn't you? A. Yes, sir.

Q. We had quite a little chat, didn't we, in other words? A. Yes, sir.

5398 Q. Do you remember what you told me that night? A. I do not think I told you a whole lot.

Q. Do you remember, do you remember how many men you carried at one time on this boat, maximum load? A. Do I remember?

Q. Yes. A. Not any more than 65.

Q. Do you remember telling me you carried 120? A. No, sir.

Q. During the strike two years before? A. No.

Q. And that you could not keep them off the boat? A. No, I never told you that.

5399 Q. Did you tell me you reported it to Mr. Stover? A. No, sir; Mr. Stover was never working there at that time, if that is what you were alluding to, when there was a strike.

Q. Didn't you tell Mr. Stover about that when you were asking for an extra man to handle this crowd? A. No, sir.

Q. What? A. No, sir; Mr. Stover was never there at that time.

Q. Did you tell me there were as many as 100 men on that boat at times when you had been running her? A. No, sir. You wanted information out of me, and I told you I have already
5400 made a statement to that effect, and I had nothing more to say.

Mr. Axtell: Will you produce the statement?

(Mr. Englar produces statement and hands it to Mr. Axtell.)

Mr. Englar: I do not think Mr. Axtell has any right to call for this statement, but I am perfectly willing to produce it.

Q. Do you think she could carry 86 all right? 5401
A. I believe she could carry 86 men on there and take them over the river safely.

Q. If you didn't hit anything? A. Well, what do you mean, hit what?

Q. So if she filled up suddenly with water, if she did that, you would have a lot of trouble getting 86 men out of that boat, wouldn't you? A. I do not know if they would or not; it all depends on how careful those men went out.

Q. Or how fast she sunk? A. Or how fast she sunk, or the confusion there was at the time.

Q. If you think she could carry that many men 5402
with safety, why did you testify that you told Mr. Dressler not to carry more than 60? A. I will tell you why. I have been handling boats getting inspected by the Custom House, and they allow 18 inches to a person, and through that, when they did not inspect us, why, we could carry as many men as what we had life preservers if we felt that way about it.

Q. Do you remember the testimony of the Steamboat Inspectors to the effect that on boats of this character they would require 9 square feet per person?

5403

Mr. Englar: One moment——

A. I do not know anything about that.

Mr. Englar: There is no such testimony.

Mr. Axtell: Even your "Doris", that you have been bragging about, allowed 8 square feet per person, and that is only during the summer season.

5404 Mr. Englar: That is an excursion boat; we are not talking about excursion boats.

The Court: Another question, please.

Q. According to the way of your figuring out now, she is a pretty good boat, or was, was she? A. Yes, sir, she was well built.

Q. And big enough for 86 people? A. If you wanted to put them all in; it was all up to the man handling the boat; if he felt like putting them on he could put them on.

Q. You had no regulation from the company to
5405 prevent you from putting that many on? A. When I came to Spencer Kellogg & Sons a man by the name of Mr. Kay hired me, and that was when Mr. Medlicot had charge, and he told me the instructions he had to give me was to put the men on the boat and try not to put any more than 65 men on. I asked him why, and he said there was 86 life preservers or more on the boat, but he said he would advise me not to put any more than 65 men on the boat; it was what the company would want on the boat.

Q. But more were carried at times? A. Not as long as I handled it.

5406 Q. You won't admit you ever carried—you won't admit on the stand now you ever carried more than 65? A. I will not, because I never done it.

Q. But you knew— A. I have laid alongside of the dock with 100 men on and ordered them off, I will admit that; but I never left the pier with that many men on.

Q. And then after that time you tried to get an extra man to help you? A. I had an extra man to help me.

Q. You tried to get one? A. I had Freddie 5407
Lang, who used to ride with me in the morning, and used to come in early in the night and ride with me to have a little more experience.

Q. You asked for a regular extra man, didn't you? A. A steady man?

Q. Yes. A. If I felt it was kind of rough or something that I needed an extra man, I asked for one, but otherwise I did not.

Q. Mr. Dingle, I have asked you a straight question; give me a straight answer. A. I am giving it to you.

Q. You asked for an extra man from Mr. Stover, 5408
didn't you? A. I asked for an extra man on what occasion? What are you driving at?

Q. You asked for an extra man, didn't you? A. I do not know what you are driving at.

Mr. Englar: Just a moment.

Q. You do not deny that you did, you do not deny that you told me that you had asked for an extra man and did not get it? A. No, if I asked for an extra man I got it.

Mr. Axtell: I think the witness should 5409
answer.

Mr. Englar: The witness has very clearly and intelligently answered that question, and if your Honor will go back you will see that he has.

The Court: Read back that part of the testimony.

(The last seven questions and answers were repeated by the stenographer.)

5410 The Court: I think he should answer the question correctly.

Q. Let us not be disagreeable about this matter. A. I am not disagreeable, Mr. Axtell, do not think that.

The Court: Ask him the question again.

Q. You asked for a regular man to run with you on this boat, didn't you? A. Continuously, is that what you mean?

Q. Yes. A. No, I never did.

5411 Q. You never did? A. No.

Q. Did not you ask to have a man assigned that you could have whenever you wanted him, that is, to use whenever there were extra men expected? A. No, I never asked for that.

Q. You didn't? A. No, not a regular man, not a man I could pick out. I would get a man off Mr. McHale any time I wanted one, I would go to Mr. McHale and get one of his men.

Q. Why did you leave there?

The Court: How often did you do that?

5412 The Witness: Very seldom.

Q. Why did you leave there in October? A. Why did I leave?

Q. Yes. A. I had a little argument.

Q. With whom? A. Well, Mr. Balz.

Q. What about? A. He was supposed to have said something about me that I did not think was fair. Something tending to my work.

Q. Wasn't it about the boat? A. No, it was not.

Q. Did Mr. Balz have anything to do with the boat? A. Not at that time, I do not believe. 5413

Q. He had nothing to do with the boat? A. No, sir.

Q. While you were running it? A. No, sir.

Q. He was the superintendent of transportation, the boat came under him? A. That came about after I left.

Q. Did not this argument have to do with the "Linseed King"? A. No, this argument started through a chauffeur that came up and told me that I was being knocked, and I was not on my job.

Q. How long were you off the job? A. I was away from my job for two months, a little over two months. 5414

Q. Then you came back, and were you re-employed? A. I came back and was re-employed. I was out of a job and I finally came back.

Q. That is to say, you were re-employed after the "Linseed King" accident? A. After the "Linseed King" accident.

Q. When was she hauled up in 1925, do you remember? A. When was she hauled up?

Q. Yes. A. We had her tied up alongside the dock, I really do not remember what time of the year it was we took her down. 5415

Q. Would this statement help you to recall when you took her out? A. That don't give no date.

Q. That wouldn't guide you very much as to the date? A. No.

Q. The bill of Mr. Clayton's, a copy of which was put in evidence, showed February 11, 1927, 1926. Would that refresh your recollection in connection with the evidence? A. It might be; in 1926, yes. The date I do not know.

5416 Q. Do you remember when you put her over again in the spring? A. I have not got the least idea what date it was.

Q. Isn't it a fact she was hauled up simply to clean her and scrape her and get her in good condition? A. No, the fact was she was hauled up and cleaned and painted and the cabin was put on her by Mr. Clayton while she was out of the water.

Q. In this affidavit of December 22, 1926, two days after the accident, you swore to that in front of Mr. Johannis, didn't you? A. Yes.

5417 Q. He used to be over you, did he not? A. Every time I had some machine work to be done and I could not do it myself, he would give me a man to do it.

Mr. Englar: I would like to have a ruling from the Court on that point. I think if I am to supply statements to Mr. Axtell, and he is going to cross examine the witnesses on them, I should have the privilege of offering them in evidence afterwards.

The Court: I did not require you to

5418 exhibit this statement; you did it voluntarily.

Mr. Englar: Then I will not permit Mr. Axtell to use it.

Mr. Axtell: You have already given it to me.

Mr. Englar: I have given it to you, but I will not let you read it unless you agree I can put it in evidence afterwards.

Mr. Axtell: I will offer it, but I want to question this witness.

The Court: What would be the purpose of offering it in evidence? Simply to corroborate the testimony of the witness? It would not be corroborative of anything he said on the witness stand; and if there is anything in there about which you wish to interrogate him, regarding which he has not already advised us, you can refresh your recollection from that. 5419

Mr. Englar: I think there is a good deal of suggestion in reference to these statements. I am perfectly willing to show them to Mr. Axtell, but I think they should go in evidence. 5420

Mr. Axtell: I will offer this affidavit first.

The Court: It will be received.

(The same was received in evidence and marked Claimants' Exhibit MMM of this date.)

Q. Where were you when you signed this first one with Johannis? A. Where was I?

Q. Yes. A. I believe I was at the Kellogg plant at that time.

Q. And do you remember you were not working there at that time, were you? A. No, sir. 5421

Q. Did they send for you? A. I had a brother working there at that time and he asked me would I come down.

Q. And when you got there was this statement already prepared? A. No, sir, it was not.

Q. Where was this typed?

The Court: Is that very material?

Mr. Axtell: Yes, I think so.

A. Typewrited in Kellogg's office.

5422 Q. Was there a lawyer there? A. Not that I know of.

Q. Was Mr. Hagen there? A. Not that I know of.

Q. Or any of these gentlemen at the table here? A. No, not that I seen there, not when that one was made, no, I do not think so.

Q. This other statement is dated the 1st of February, 1927; this is a year or two afterwards nearly, quite a long time afterwards? A. When?

Q. This other affidavit, do you want to look at that? A. What date is it?

5423 Q. You look at it. A. February 1, 1927.

Q. That would be about six weeks later? A. After the accident.

Q. Six weeks later. Was that made in Edgewater too? A. No, I believe that was made in a lawyer's office.

Q. Oh, in the lawyer's office? A. Yes.

Q. You had not entered their employ when you made this statement? A. Yes, sir, I had, long before I made this statement.

Q. When did you enter their employ after this accident? A. December 23rd, I believe it was; yes, December 23, 1926.

5424

By the Court:

Q. What character of work are you doing now? A. Chauffeur, driving.

Q. Who are you chauffeuring for? A. Spencer Kellogg Company.

Q. Yes, I know, but what kind of chauffeuring? A. A truck.

Q. A truck? A. 7½ ton Mack.

By Mr. Axtell:

5425

Q. Does not this seem to corroborate what I questioned you about as to carrying 100 men, on page 4 of this affidavit, "Before the pilothouse was put on the 'Linseed King', I had seen 100 men crowded into her cabin. That is the limit which the boat would carry, and it was very unusual for the boat to have that many. I permitted that only once, and from that time on I would not allow over 80 men on the boat. With 80 men the boat would be somewhat crowded." Do you recall that? A. That 100 is what I told you——

5426

Q. I see——

Mr. Englar: Read on.

Q. "When I speak of the number of men that I carried I refer to times prior to the installation of the pilothouse. When the new pilothouse was put on the 'Linseed King' it cut down her carrying capacity because a large part of the space toward the bow was taken up by the pilothouse, and the space allowed for the captain. I should say that pilothouse would cut down her carrying capacity by about 10 men." Is that right? A. About 10 men?

5427

Q. It is true you carried 100 men, isn't it? A. Alongside of the pier, as I explained to you before, and I ordered the men off.

Q. Perhaps the attorney who drew this statement up misunderstood you. You said it was very unusual for the boat to have that many, as many as 100. See if some mistake has been made here. A. I believe they must have misunder-

5428 stood me on that thing, because I wouldn't be in doubt; I do not know whether I said it or not, but I probably told them I had 100 men on that boat alongside the dock.

Q. And I suppose I misunderstood you? A. I might have said she would carry 100 men if somebody wanted to carry them across here.

Q. I suppose I misunderstood you that night when I was talking to you outside the plant? A. I said very little to you outside that plant. Furthermore, you know I didn't want to say anything.

5429 Q. You wanted to be truthful all through this matter, didn't you? A. Everything I had to say was the truth, that is what I told you that night, and I didn't say anything that wasn't the truth.

Q. Now, it appears to be the truth you did carry 100 men? A. Never across the river.

Q. You know it was a good many? A. 100 men would be too many, certainly.

Q. And 86 men would be too many? A. 86?

Q. Yes. A. I believe you could carry 86.

Q. You said here 80, you thought, would be somewhat crowded. A. 80 would just fill her up; I would not say jammed, but just fill her up.

5430 Q. Well, now, you seem to think there was some difference in the load you could carry with the cabin on and without it, didn't you? A. What do you mean? There was always a cabin on her. That boat was never without a cabin.

Q. You said, "Before the pilothouse was put on the 'Linseed King' I had seen 100 men crowded into the cabin, that is the limit which the boat would carry. It is very unusual for the boat to have that many"? A. Yes, sir.

Q. You were permitted to carry that many?

A. How could I be permitted when I know the laws would not permit me to carry any more than a life preserver for every man? 5431

Q. Well, you had 86 in the top and in the back, and 3 more under the front locker, that would be 89, and of course you could figure a couple of men would float on the boat or would swim, couldn't you? A. There might be a good many could swim, for all I know.

Q. You did think of the number you were carrying with relation to the number of life preservers you had, yes? A. I do not say I carried as many as there were life preservers; I carried—— 5432

Q. You seem to think there was some relationship, there was some duty on your part not to carry any more than you had life preservers? A. Why, it would be violating the law if I did.

Q. You think there was a law with respect to that? A. It calls for a life preserver for every passenger on board, that is what I always understood.

Q. What was a life preserver to be used for? A. What was it to be used for?

Q. Yes. A. If a man fell overboard or something. 5433

Q. Were any used in this case on the 20th of December? A. That all depends. That all depends on whether or not the men used their heads or did not use their heads. I cannot understand why they were not used. I know if I was on that boat and held my head I would have gotten a life preserver.

Q. You are sure you would? A. I am pretty sure I would.

Q. I thought you said Rohweder was a compe-

5434 tent man, he had been at sea longer than you have? A. I have not said anything about Rohweder.

Q. You heard how he went out through the window taking the glass with him, not even looking for a life preserver? A. I do not know nothing about Rohweder. I don't know nothing about him.

Q. You have seen the size of the holes in that boat? A. You mean in the hull?

Q. Yes. A. Yes, sir.

Q. It would not take long to sink the boat with that hole in it, would it? A. Not if all the men

5435 ran forward on her.

Q. Could anybody move, much less run, with that load on her? A. Who knows how the men were standing? Were they standing forward or were they standing aft?

Q. We have proven there were 86 in there already, taking the police records. A. I don't know nothing about it.

Q. You said with 86 men in that boat they would be somewhat crowded; do you think they would have any room to run? A. To run?

Q. Yes. A. I believe they could step out easily

5436 enough.

Q. Here is the picture of that boat. Have you got the one put in there showing the inside of that boat? That is the engine back there? A. Yes, sir.

Q. How many men could stand up back of that engine? A. There would be about 8 or 10 men that would go back there.

Q. 8 or 10, and how many would be seated back of that? A. Well, on the seats?

Q. Yes. A. Well, it all depends on how much that length was.

Q. Didn't you ever count the number of men sitting down on that boat when the seats were all full? A. I believe I counted one time around 38, and another time 39, and I counted them another time when there was 40 sitting on the side. 5437

Q. Depending on the size of the men? A. Yes, depending on how they fit in. You know sometimes they fit in like that and out like this (indicating), they do not fit evenly, and some sprawl out all over.

Q. How many men could you get in front of the engine standing up? A. Oh, I should judge about 30 men in front of the engine, if you want to put them in there. 5438

Q. That would be about 42 altogether standing up, and maybe 40 sitting down, which would give you about 82 or 83? A. You could put, I believe, 30 men standing up in front of that engine.

Q. That would fill her pretty full? A. They would have room to move around.

Q. You can look at the pictures to refresh your recollection to see how small size she is there. She wasn't very big. A. She had plenty of room inside.

Q. She wasn't very big? A. I didn't say she was very big. 5439

Q. Between these seats was only 5 feet from one side to the other? A. I couldn't really remember the measurements.

Q. What happened when they all got up? Could they all stand up at once with 40 men in the middle? A. I have never seen all standing up at once, and I have never seen 40 men standing in the middle.

Q. You just told us about that. A. I said I believe you could stand 40 men in there.

5440 Q. What were they doing when you got 100 men in there? How did you get them in? Did you drop them in with a derrick? A. No, they all came in through the door.

Q. You are not going to go back on your statement that you had seen 100 men crowded in the cabin under oath here, are you? A. I have seen them in the cabin, yes; I am not denying that I have seen them in the cabin.

By the Court:

5441 Q. But you want me to understand you did not bring them over? A. No, I did not bring them over; we were lying alongside the dock.

Q. You did not carry them over? A. No, sir; I ordered them off.

The Court: That is what I understood at the outset.

Mr. Axtell: That is all. I offer this second affidavit in evidence.

(The same was received in evidence and marked Claimants' Exhibit NNN of this date.)

5442

Re-direct examination by Mr. Englar:

Q. When you had a load of 60 or 65 men on this boat and laid at the dock, about how long would it take them to get out under ordinary circumstances? A. Around 3 minutes.

Q. Was that using all three exits or not? A. That was using two.

Q. The two forward ones? A. The two forward ones.

Q. You have testified that you left the Spencer Kellogg Company around October, and that you were re-employed after this accident. Had there been any discussion, had you had any discussion with anybody representing the plant prior to your coming back? Did anybody there, Mr. McHale, or anybody, talk to you? A. I had seen Mr. McHale before that; I tried to get back before the accident. 5443

Q. You had been at his house and had asked him to take you back? A. Yes, sir, because I was out of work.

Mr. Englar: That is all. 5444

(Witness excused.)

FILIPO DURTE, recalled, testified as follows:

Direct examination by Mr. Matteson:

Q. Can you give us the address of Candida Rosa? Where did he live? A. Rosa?

Q. Yes.

The Court: You asked him that this morning. 5445

Mr. Matteson: He did not know the address.

The Court: He did not know?

The Witness: No.

Q. You say you do not know his address? A. No.

Q. Do you know the address of Martines? A. No.

5446 Q. You do not know his address? A. No.

Q. Did you see him anywhere except at the plant? A. I see where he lived before, but I do not know now.

Q. You see where he lived before? A. Before the accident.

Q. Just what do you mean by that, before the accident? A. Yes.

Q. You knew before the accident, but you do not know now? A. Yes.

Q. Did he live anywhere near where you lived? A. No.

5447 Q. You do not know where either of them lived? A. No.

Q. You spoke of some men that you said you thought were dead because you had not seen them again. You did not know just who they were, and you did not know they were dead, but just that you have not seen them since the accident, is that all you know about it? A. Yes, that is all I know.

Mr. Matteson: That is all.

(Witness excused.)

5448 (Adjourned to Tuesday, January 31, 1928, at 10:30 A. M.)

New York, January 31, 1928.

(Met pursuant to adjournment at 10:30 A. M.; present as before.)

Mr. Englar: If your Honor please, I did not read this statement of Mr. Dingle

before it was offered in evidence. There are some things in there I will have to ask him to explain. 5449

MATTHEW CHARLES DINGLE, resumed the stand.

Re-direct examination by Mr. Englar (continued):

Q. I read your statement that was put in evidence yesterday, and in that you referred to a number of things that occurred before the pilothouse was put on this boat. When was the pilothouse put on this boat? A. 1925. 5450

Q. What time of the year? A. I ain't exact, whether it was March.

Q. Was it before she went into service that spring? A. Yes, sir.

Q. So that anything that occurred before the pilothouse was put on was something that happened in 1924 or earlier, is that right? A. Yes, sir.

Q. Now, in your statement you referred to a complaint you made to Mr. Stover about a certain crew of these men. What, if anything, was done about that? A. There was a telegram put up on the boat to that effect, that the men should do as I told them, and if not, they would be discharged. 5451

Q. Do you know of anything else that was done by Mr. Stover? A. He also notified the foreman of that shift.

Q. To do what you said? A. Yes, sir.

Q. After that did the men do as you wanted them to? A. Yes, sir.

Q. I neglected to ask you anything yesterday

about ice; while you were on the boat was she ever run in ice? A. Not when there was a lot of ice.

Q. Was she ever run at night after there was any ice? A. No, sir.

Q. When ice first appeared in the river what was done? A. The boat was tied up.

Q. After that would you make any trips in the day time? A. The river cleared up, then I would talk to Mr. Stover about it, and we made daylight trips only.

Q. And did you ever make any daylight trips when there was ice enough so that there was danger of the boat coming in contact with it? A. No, sir.

Re-cross examination by Mr. Axtell:

Q. I suppose you mean by night after sunset? A. Before dark.

Q. By night you mean after sunset? A. Yes, sir.

Q. If you were running in the day time and it got to be night you would lay her up? A. Yes, it would not run.

By Mr. Jayne:

Q. When there was ice in the river you would discuss with Mr. Stover whether in his judgment there was sufficient ice not to go, or little enough ice so you could go? A. I suggested that to Mr. Stover myself. If I thought there was ice to harm the boat I would tell him we were through running, because I would see the ice first.

Re-direct examination by Mr. Englar: 5455

Q. This question of whether you would make daylight trips was a subject of discussion between you and Mr. Stover after you first tied the boat up? A. Yes.

(Witness excused.)

HERBERT BALZ, recalled on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows: 5456

Direct examination by Mr. Englar:

Q. You have testified before in this case, Mr. Balz? A. Yes, sir.

Q. There has been some testimony or suggestion that in 1926 the roof of this cabin of the "Linseed King" was raised and made higher; is that true? A. No, sir.

Q. Was it ever raised from the time it was first put on? A. Not in my time there, not from the time I came to the plant.

Q. As I recall your testimony, in addition to your position of general superintendent there you ran this boat yourself from time to time? A. Yes, sir. 5457

Q. When would that be? When would you have occasion to run it? A. If the captain did not show up, I was sick, or anything like that, I ran her at times.

Q. I understand Mr. Dressler did pretty much the same sort of thing? A. Yes, sir, Mr. Dressler

5458 ran the boat before I came there, and it had been the practice, I guess, of him running it when the captain did not show up, so I took it for granted he was all right.

Q. What I am getting at is if the captain did not show up, or was laid up sick, you might run the boat, or Mr. Dressler might run it? A. Yes, sir.

Q. There has been testimony there was a siphon kept on the pier to pump this boat out, a steam siphon. What can you tell us about that? A. There was never a siphon kept on the pier to pump
5459 out the boat, outside of one occasion when we changed those valves, and we took considerable water.

Q. You told us about that before. A. I told you about that before, but outside of that I never seen a siphon, outside of some places siphons are used around our plant on sewers and catch basins.

Q. That is the only occasion you know of a siphon being used on the boat? A. Yes, sir.

Q. Can you tell us about when that occasion was? I do not expect the exact date, but approximately. A. That siphon was used——

5460 Q. Was it during Capt. Rohweder's time? A. Yes, sir, it was in Capt. Rohweder's time.

Q. One witness has testified there was a pump kept on the pier there, a sort of double action pump, to pump this boat out. What can you say about that? A. I do not know of any pump outside of the one pump that we use for unloading cargoes of cocoanut oil, and that is such an enormous thing it could not be used for anything like this.

Q. Do you know anything about the life preservers that were in the locker forward? A. Yes, sir, there was some up there. 5461

Q. Why were they put there? A. They were discarded life preservers.

Q. Did you eventually do anything with them? A. I threw some overboard at the time we checked, that either got grease or oil on, or were torn, and we discarded them altogether. That cupboard was a locker the captain kept his tools and clothes in. I did not count them in.

Q. You did not count them in among the life preservers? A. No. 5462

Q. If you had occasion to tighten the stuffing box of this boat do you have to drydock her? A. No. The stuffing box was inside the boat, and could be tightened I would say in five or ten minutes.

Q. Did you ever have any trouble with this boat leaking? A. No, sir, not leaking.

Q. On this first regular trip, which was around 6:30 in the morning, from New Jersey to New York, did the boat ordinarily carry any men on that trip? A. Never no men, only an occasional one might, or something like that, who happened to be going across, but there was not any men from the plant that rode on it regular. Most of the time it always went with only the captain. 5463

Q. There was no shift of men at that hour? A. No, sir.

Q. What was the practice during your time at the plant with respect to the trips that were made when there was a steel ship in in the early morning? A. There was always an extra trip made at the time the men came off from working

5464 on the seed ship, and both in the morning when seed ships were in, we made an extra trip.

Q. To bring them from New York? A. From New York, and over. Of course, we did not get all the men we wanted, and lots of times it was not necessary to make any extra trip.

Q. You mean lots of times there were not enough men to make it? A. No, sir. The same at night; we always made an extra trip. If I am not mistaken, there was an extra trip made around 5:40, or a quarter to six. We made a trip at 5:20, and all we had was the men who would

5465 work on the dock at that time.

Q. On the trips that you made or that were made while you were there, was there any occasion, as far as you observed, or knew of, to crowd the boat? A. Not that I know of. I never saw it what I would call crowded. I do not see any necessity of crowding.

Q. It appears from the evidence that in addition to these trips made in the early morning there were later trips made at various times during the day. Did some of these extra men come on the later trip, or did they come on the first trip and the extra trips? A. They came on later

5466 trips; in fact, some of the ads read for men to apply at 10:30.

Q. The advertisement named certain later hours? A. Yes, sir.

Q. And when you were getting extra men you got them on later trips? A. Yes, sir, and on occasions when we hired men I never brought men that were being hired when they started to work, I always brought them over on the 7:30 trip.

Q. Did Arthur Klahre run this boat any time

during 1926, to your knowledge? A. Yes, sir, he ran it once, and that was in the day time.

Q. About what month was that? A. That was about in April; sometime in April, and it seems that Mr. Dingle did not show up or something, was off that day, and Klahre run—when I came down Klahre had been running the boat, and it was only shortly after I met Mr. Stover and he gave me orders to get him off the boat.

Q. Did he ever run the boat again after that? A. Not in my time.

Cross examination by Mr. Jayne:

Q. I understood on your direct testimony previously, you said you had a boat of your own? A. Yes, sir.

Q. And you ran it to carry passengers? A. I did.

Q. For hire? A. Yes, sir.

Q. How long was that boat? A. 41 feet.

Q. How wide was it? A. 9 foot beam.

Q. How many passengers were you permitted to carry? A. 45.

Q. Your boat was not crowded then, was it? A. No, I would not say it was crowded.

Q. Do you say when you got 87 on the "Linseed King", 42 feet long, she was not crowded? A. I would not say she would be crowded.

Re-direct examination by Mr. Englar:

Q. How many life preservers did you have on this boat of yours? A. 45.

Q. Did the inspectors count the life preservers? A. Yes, sir.

5470 Q. And then they said you could carry 45? A. Yes, sir.

(Witness excused.)

HARVEY BARRETT, recalled on behalf of the petitioner, in rebuttal, testified as follows:

Direct examination by Mr. Englar:

Q. Mr. Barrett, supplementing your testimony
5471 before as to your experience, have you designed passenger vessels? A. Yes, sir.

Q. In your experience at sea have you served on vessels carrying passengers? A. Yes, sir.

The Court: How long was that boat the last witness mentioned?

Mr. Englar: 41 feet. I think it appears in the direct testimony of that witness that boat was used for fishing parties or excursions of one kind or another. She was not a ferryboat at all.

Mr. Jayne: She ferried to the battle-
5472 ships.

Mr. Englar: She took parties to the battleships and also ran on fishing trips.

Q. Now, Mr. Barrett, will you state whether in your opinion the "Linseed King" was seaworthy to carry 86 passengers across the North River?

Mr. Jayne: I object to this inasmuch as it is covered. We cross examined him on it at great length.

Mr. Englar: I did not examine the witness on the point at all. I only went into the physical fitness of the boat, and my friends asked many questions on cross examination, to which I protested, and your Honor said you would give them a great deal of latitude. I do not think that deprives my asking about it. 5473

The Court: Objection overruled.

A. Yes, sir, I do.

Q. That is, in your opinion she was, is that your answer? A. Yes, sir.

5474

Mr. Axtell: As designed and constructed as she was at that time?

Q. I am talking about her condition as it was before the accident. A. Yes, sir, that is what my answer means too.

Q. What was the total inside area of the cabin including the pilothouse, that is, the area above the seats?

Mr. Jayne: Including the seats?

Mr. Englar: Area above the seats. I asked him to give the total square foot area of the cabin above the seats. 5475

Mr. Jayne: That would be the same area as the roof.

Mr. Englar: Not exactly.

Mr. Jayne: About.

A. That amounts to 233 square feet.

Q. What was the area of the deck outside the cabin on the main deck? A. 133.9 square feet.

Q. And what was the area on the roof of the

5476 cabin? A. 237 square feet, cabin and pilothouse.

Q. You testified, Mr. Barrett, as to the draft of this boat light. How did you get the weight of the cabin? A. I weighed the parts of the wreckage that were missing, or that were available, and laid them on the ground, measured them up very carefully, and measured the area of the parts that would be missing, and based on unit weight of the parts which I weighed, I estimated the weight of the missing parts.

Q. Did you subsequently test your calculations as to draft, and so forth, by putting the boat in the water? A. I did.

5477 Q. Are there any rules as to emergency exits on vessels for crew or passengers, that is, as to the number or size of them? A. There is a rule, Steamboat Inspection Laws.

Q. Let us have that, please. A. I prefer to read that, because I do not remember it word for word.

Q. Read it into the record, please. A. The title is "Means of escape from steamers. On all steamers where the plans and arrangements will possibly permit, all inclosures where passengers or crews may be quartered, or where anyone may

5478 be employed, shall be provided with not less than two avenues of escape, so located that if one of such avenues is not available another may be. The locality and arrangement of such additional means of escape shall be determined by the Steamboat Inspectors and the Steamboat Managers as will in their judgment best carry out the purposes for which this provision was made."

Q. Does [illegible] of course, to steam vessels which are subject to regulation by the Inspectors?

A. Yes, sir.

Q. Will you give the number of that? A. Steamboat Inspection Rules and Regulations for Rivers. It appears on page 77, item 46.

Q. And what is the number of the section? I do not think you gave that. A. Rule 4.

Q. Now, have you in actual practice had occasion to provide those exits and to ascertain what would be accepted by the Inspectors? A. Yes, sir.

Q. About what size exits are acceptable to the Inspectors under those rules? A. Anything from an 18-inch diameter manhole up to a full sized door, depending on the condition, where it is located, and the arrangement of the bulkheads and rooms.

Q. Have you in fact, had 18-inch manholes passed as means of escape under that rule? A. Yes, sir.

Q. What is the area of an 18-inch manhole? A. 254 square inches.

Q. Some testimony was given a day or two ago about some rule with respect to the position of bulkheads, how far they should be from the bow. Are you familiar with such a rule? A. Yes, sir, I am familiar with it.

Q. Will you tell us what rule it is and read it into the record? A. It appears in Rule 3, Coastwise Regulations, Article 61.

Q. Coastwise Regulations by whom? A. The Board of Supervising Inspectors, United States Steamboat Inspection Service.

Q. Just read it into the record. A. "Bulkheads. Every sea-going steam vessel constructed after July 1, 1912, carrying passengers, shall have a watertight collision bulkhead. In vessels not over 200 feet in length this bulkhead shall be located about one-tenth the vessel's length from

5482 stem. In vessels over 200 and not over 350 feet in length the collision bulkhead shall be located about one-twelfth the vessel's length abaft the stem. In vessels over 350 and not over 500 feet in length it shall be located about one-fifteenth the vessel's length abaft the stem, and in vessels over 500 feet in length about one-sixteenth the vessel's length abaft the stem. Such vessels shall—" shall I read the rest of this? It is quite a long article.

Q. If the rest has no bearing on the sort of boats we are interested in, you don't need to read it.

5483

The Court: Let me look at it. Does it make reference to vessels under 200 feet in length?

Mr. Englar: Yes, I think the first of it does.

The Court: You mean the first sentence?

Mr. Englar: Yes.

Q. Mr. Brazell testified that a vessel should be able to swing through an arc of 60 degrees. What have you to say to that as applied to this case?

5484 A. In the case of small harbor craft, 30 degrees either side of the vertical is permissible and to be expected. 60 degrees to one side of the vertical would be quite impossible, because harbor vessels do not have enough freeboard to permit such an angle of inclination.

Q. It is impossible, on the face of it, as to small harbor craft? A. Yes, sir, vessels like ocean liners and ocean-going ships which have several decks and walls sided, thereby affording considerable freeboard, can roll as much as 60 degrees without capsizing.

Mr. Englar: That rule does not apply 5485
to this boat, your Honor.

The Court: Why are you reading it into the record then?

Mr. Englar: Because it was referred to a few days ago by Mr. Brazell:

The Court: Why doesn't it apply?

Mr. Englar: It only applies to steam vessels. There are several reasons why it does not apply. It was referred to as giving a standard as to how far the bulkhead should be from the stem in cases where the rule applied.

The Court: It speaks of ocean-going 5486
steam vessels. Is a steam vessel broad enough to take in a steam launch?

Mr. Englar: This was not a steam launch, and was not sea-going. I am only bringing it in because it was referred to by Mr. Brazell, and the way it got in the record was confusing, and I want to show if it did apply the bulkhead would be one tenth from the vessel's stem.

The Court: Your contention is that a craft like this used in river transportation does not require any bulkhead? 5487

Mr. Englar: Yes, I think there is no question about that. There is no rule on the subject.

Q. Have you calculated at my request, Mr. Barrett, how fast water would come in the opening that was found on the starboard bow of this vessel? A. Yes, sir.

Q. State in your answer what your assumption is as to submergence? A. I have assumed that

5488 the square area of the opening was 5 square inches, and that the hole was one inch under water, the center of the hole. That would flood water into the vessel at the rate of 302 pounds per minute, or it would take 7.4 minutes for one ton of water to flow into the vessel.

Q. Suppose you submerged it further, suppose you submerged it to 6 inches, how much would that hasten the inflow? A. If submerged to 6 inches it would take 2.97 minutes for one ton to flow into the vessel.

The Court: Let me see your figures.

5489 Mr. Englar: This is the one on the starboard side we are talking about, your Honor, not the big one.

The Court: The small one?

Mr. Englar: In the large hole it flows in very much faster.

The Court: I did not understand you. I thought you were talking about the port hole.

Mr. Englar: No, I asked about the small one.

5490 Q. I understand these assumptions as to submergence are simply arbitrary assumptions I asked you to make. A. Yes.

Q. You are not testifying the boat would be submerged to any particular depth? A. No.

Q. How much water, in your opinion, would have to come into the vessel before she would cease to be stable with a load of say 86 men? A. About 5 tons.

Q. And how much water would you have to take in to sink her down with her main deck

level with the water—you do not need to give me that exactly if you have not got it figured? A. About 22 tons in addition to the weight already in the boat, men and hull. 5491

Q. Now, in her ordinary condition, with the boat dry, and say 86 men on board, what would you say as to whether the boat was tender or unstable? A. She was neither tender nor unstable. She has plenty of GM.

The Court: Plenty of what?

The Witness: GM, that is metacentric height, and good righting moment.

Q. At about what angle on either side would the righting moment begin to decrease? A. At about 30 degrees it begins to decrease. It reaches the maximum at about 30 degrees list. 5492

By the Court:

Q. Doesn't the difference between live weight and dead weight make a difference in calculations of this kind? A. A little bit, but not very much in this particular case. It depends on how the men are standing. If a man is standing with his feet braced he is equivalent to a fixture. If he is pivoting the weight is applied at the point of pivot, which in that case would be his feet. A piece of cargo swinging from a boom acts on the ship at the point of support of the boom rather than at its own center of gravity. 5493

Q. These calculations are on fixed weight, I take it? A. Yes, sir.

By Mr. Englar:

Q. Are you able to tell us, Mr. Barrett, to

5494 what extent your calculations would be affected by the fact you were carrying people instead of carrying some inanimate cargo? A. For the statical stability condition there is no difference.

Q. I suppose the fact the men were standing on a level below the deck would? A. Yes, it changes the height of their center of gravity with reference to the water plane of the boat.

Q. To continue your testimony on this subject of righting moment, I understand you to say it reaches its maximum at 30 degrees? A. Yes, sir.

Q. Am I correct in understanding that that
5495 means that up to that point the vessel not only has a tendency to come back to an even keel, but that that tendency is getting greater all the time up to that point? A. Yes, it is.

Q. And you say at about that point it begins to decrease? A. Yes, sir.

Q. Am I correct in understanding that she still has a tendency to come back, but it becomes less after that point? A. Yes; it gradually decreases after it passes 30 degrees. I do not know where it vanishes because I did not carry my calculations far enough for that, but the vessel in light condition I calculated over 40 de-
5496 grees, and at 40 degrees the curve was still flat, which would indicate it would extend on at least another 20 or 30 degrees, and in that loaded condition the curve would undoubtedly have a positive value up to 60 degrees, provided the openings in the deck house were watertight and the ship could roll that far without shipping water.

Q. In other words, she would continue to have a righting moment until water began to come in the doors? A. Yes, sir.

Q. Which were set back some distance from the outer edge of the deck, that is correct? A. Yes. 5497

Q. Can you give us an idea to what extent your calculations as to righting moment would be affected by the fact that if the boat listed the men might swing over to one side? If that is likely to take some time— A. It will take a little time.

Q. Then I will suspend on that and will ask you to do that figuring off the stand, and I will recall you later to give the result. Mr. Barrett, do you know of any scientific data as to the space occupied by people in crowds? A. Yes. 5498

Q. Will you tell us as a result of your knowledge and investigation about how much space people occupy in a very dense crowd, such as say the rush hour in the subway, or on ferryboats, or in theatre exits, when people are streaming out? A. On the I. R. T. subway I have counted 24 people standing in the vestibule at one end of the train in an area of 31 square feet, which was an average of 1.29 square feet per person. I have also observed 42 people standing in the aisle between the seats on one of these trains, and the space between the seats after deducting a space of 2 feet wide from the back of the seat to the front of the passenger's knees would leave an area of 59.2 square feet, or 1.41 square feet per person standing. 5499

Q. Have you any data from scientific journals? A. Professor L. J. Johnson made some experiments on the weight per square foot of crowds in public buildings, and that is published in the April 14th issue, 1904, of Engineering News; whereas he found the weight per square foot varied from 134.2 pounds to 156.9 pounds per

square foot, he adds "The Mylius results were obtained by crowding a number of persons previously weighed into a small room, the men being tightly packed so as to resemble such a crowd as frequently occurs on the stairways and platforms of a theatre or other public building."

Q. Can you figure out from that approximately the space each person would have under those conditions? A. If you took the average between the minimum and maximum which he gives and assume a man weighed 160 pounds, he would have 1.1 square feet of floor space.

5901 Q. Have you also figured out at my request, Mr. Barrett, the total floor space of the "Linseed King" between the seats, that is, deducting the seats? A. I figured it out, and I deducted the space occupied by the seats, steps, engine space and steering gear, and the net area left was 15.8 square feet.

Q. In your opinion, in figuring the space available for men in a boat of this kind, is it logical to make all those deductions, to deduct the seats and steps, and so forth? A. No, sir; take the total area of space, available space.

Q. Available for people to move around in, to
5902 use their arms— A. To use their arms, shoulders, or climb over things.

Q. Where is it you need the maximum of space, at your feet or above? A. Above your feet, at your shoulders.

Q. Now, if you consider floor space alone, and assume you had 81 men in the boat, and they were all standing up on the floor——

Mr. Jayne: How many men?

Mr. Engler: 81; he happened to figure it out at that and I am taking that.

H. Barrett—for Petitioner.

Q. (Continuing) How much floor space they have apiece in the cabin proper?

Mr. Jayne: How much floor space?

Mr. Englar: He says 153.8.

A. My figures are for the cabin and pilothouse.

Q. The cabin and pilothouse? A. 1.9 square feet per man.

Q. This 153.8 includes the pilothouse? A. Yes, excepting the space occupied by the gear, and the steps leading up to it.

Q. And with 81 men then inside the house including the cabin and pilothouse, they would have 1.90 square feet of floor space per man? A. Yes, sir.

Q. That is, if they were all standing up? A. Yes.

Mr. Axtell: I wish you would get a figure net for the floor, leaving out the pilothouse.

Q. Have you given me the floor space of the cabin proper separately? A. I have not, but I can.

Q. Well, let us have that. If that is likely to take time we can defer that too. A. It will take just a little time.

Q. Suppose you do it afterwards. A. All right.

Q. Mr. Barrett, do you know of any rule or practice which forbids carrying men on passenger ferries inside of the house? A. No, sir.

The Court: Do you mean the pilothouse?

Mr. Englar: No, sir. I mean inside an enclosed space, that is what I really mean.

5506 Q. In designing ships for passenger service do you marine architects undertake to design them so that at the point of maximum congestion anywhere on the boat everybody will have room to put on a life preserver? A. No, sir.

Q. How do you assume then as a marine architect that if any emergency arises they will be able to put on life preservers? A. I assume they will get out on deck or go to some other part of the ship. On many ships the life preservers are not all stowed on the same deck as the passengers may be and in some instances on ferryboats the
5507 life preservers are stowed on the top deck in large boxes, and if every passenger wanted a life preserver, part of them would have to go to the top deck to get them. On ferryboats plying the Hudson River they stow approximately, I would judge, one-quarter as many life preservers on the main deck as there are passengers riding on the main deck. The other passengers would have to go upstairs, either outside the house or inside, to get a life preserver in case of an accident.

Q. I am not sure, Mr. Barrett, whether the area of the top you gave me was the entire area, or whether it was the cabin only. Suppose you give
5508 me that only, giving the top of the cabin and the top of the pilothouse separately. A. The area of the top of the cabin is 203 square feet, and the area of the top of the pilothouse is 34 square feet.

Q. Now, have you figured out with any particular number of men the total amount of space available to them on the main deck of this vessel, including the cabin and pilothouse? If you have figured it out for any particular number, let us have it. A. I have only figured for the avail-

able area inside the house. If you take the area inside the house and outside the house, it would be considerably more. 5509

Q. I think you gave us the area on that deck both inside and out? A. Yes, sir.

Q. That was a total of 366.9 square feet, is that right? A. Yes, sir.

Q. And have you figured that out for 81 people? A. For 81 people that would be 4.53 square feet per man.

Q. That does not include any space on the roof? A. No, sir; that is space on the main deck outside of the house, and available space inside the house. 5510

Q. I think you were asked something when you were on the stand——

The Court: That is in the cabin.

A. In the cabin and outside on the deck, outside of the cabin and inside the cabin.

(At this point the stenographer did not hear discussion between the Court and the witness.)

Mr. Englar: I did not hear that.

The Witness: The Judge wanted to know how I reconciled my figures for the area per man with the area per man that Mr. Axtell brought out with that frame work. 5511

The Court: Yes, that is what I asked him to explain.

The Witness: In figuring the area which Mr. Axtell used in the frame experiment, I can best explain it by drawing a little diagram for you. (Witness draws a diagram.)

5512 That represents the inside of the house (indicating). We deducted all of the pilot-house part, the raised platform, we deducted the space occupied by the steps on each side forward, and all the space between the stairs, we deducted a strip 2 feet wide the full length of the vessel on both sides inside the cabin, we deducted a space aft 2 feet long in this direction (indicating), then we deducted in addition to this the space occupied by an area equal to the length of the engine, but the full breadth of the
5513 ship, so that the only two areas left were a space forward of the engine like that and a space aft like that (indicating).

The Court: This is what?

The Witness: Engine space.

The Court: Did that take up the entire area?

The Witness: No, we deducted the entire area between those points.

The Court: What did Mr. Axtell do in his illustration?

The Witness: As I understand, he took the number of men——

5514 Mr. Englar: That is an illustration of what Mr. Axtell did.

The Witness: That is an illustration of the net area which he used.

The Court: Which Mr. Axtell used?

The Witness: Yes, these two X's run across. He deducted from the available area inside the house all of the spaces except those two rectangles.

The Court: What did you do in your calculations?

The Witness: For available area? 5515

The Court: Yes.

The Witness: I deducted the space occupied by the engine.

The Court: Taking into consideration the spaces surrounding it?

The Witness: Yes. I left that as available area, because it is possible for people to walk there, and deducted this portion across the back of the ship in the way of life preservers and aft stairs; I deducted the space for each of the forward stairs and the space occupied by the steering wheel, or 5516
steering gear, and assumed all the rest of the space is available for men to move about on, whether it is on top of the seat or on the floor; in an emergency a can get on either place. There is a box over the engine 2 feet 3 inches high above the floor, and there was approximately 4 feet and 3 inches head room over it, and in an emergency a person could walk over it or jump over it. It would not be equivalent to a bulkhead in shutting them off from access.

The Court: You had better have this 5517
marked.

By Mr. Englar:

Q. Perhaps you had better explain with letters, Mr. Barrett. A. Sections A and B are the ones which Mr. Axtell used as the area available for the men to stand in, all other space being deducted.

(Marked Petitioner's Exhibit 26 in evidence.)

5518 Q. That is what was used, as you understand it, in arriving at this 63 feet that were spoken about? A. Yes, sir.

Q. Did you see the frame that Mr. Axtell had, in which he had a number of people stand? A. Yes, sir.

Q. Did you measure it? A. Yes, sir.

Q. What was the inside area of that frame? A. 7 square feet, I believe.

Q. You made a note of it at the time?

Mr. Axtell: He testified to it before under oath. He had better be careful.

5519 Mr. Englar: He is quite careful.

A. I have not the figures with me now, but I am pretty sure——

Mr. Axtell: Here it is all fixed at 8 square feet inside. We will have the experiment over again.

A. The dimensions are in the record and I prefer to use those dimensions.

Q. You took the dimensions at that time that were read into the record? A. Yes, sir.

Q. We will find that. As I understand it, Mr.
5520 Barrett, you have testified as to what you consider the total area available inside this house both as to floor space and as to the space up around the men's shoulders and arms? A. Yes, sir.

Q. Will you just tell us for the record the height from the floor of the cabin to the bottom of the windows? You will need the plans for this? A. Yes.

(Blue print is handed the witness.)

A. The average height is 4.1 feet.

Q. From the floor to the bottom of the windows? 5521
A. Yes, sir.

Q. And what is the height from the seat to the bottom of the window? A. About 2 feet 6½ inches on the average.

Mr. Englar: That is all.

Cross examination by Mr. Axtell:

Q. How many minutes or seconds would it take to sink that boat if that hole in the port side at the bow were depressed one inch, the top of it one inch below the water level? A. I have not 5522
any figures on that exact condition.

Q. You did not figure that out? A. I figured it out for a certain condition. Let me look at my figures.

Q. Perhaps you can give the area in square inches of the opening? A. Yes, sir, I can. I estimated the area of the hole to be 120 square inches.

Q. That is how many times 5—24 times. 24 times as large as the one in the starboard side? A. Yes.

Q. And the boat would be reasonably expected to sink 24 times faster? A. Yes, provided the 5523
head on the center of the hole were the same.

Q. What was the maximum you had at one inch, 7 minutes, was it, or 4 minutes, which? A. If the hole on the starboard side were 1 inch below the surface of the water, that is, the center of the hole, it would take 7.4 minutes for a ton of water to flow into the vessel and for 5 tons to flow in it would be 5 times 7.4, or about 37 minutes.

Q. Of course, you did not take into consideration, I suppose, the fact that men crowding to-

5524. ward the exits in the front would force the boat down so low after about one ton was in it that the water would come into the cockpit, into the cabin? A. It would not in that length of time.

Q. She would stay on an even keel with all these people in her for 7 minutes while they were making shore? A. No.

Q. Assuming there was not any hole in the port side at all, how long do you actually think, as a practical man, that she would stay afloat, I mean with the hole in the starboard side, but none in the port? A. I would say about half an hour.

5525 Q. That is with the people in it, of course? A. Yes, sir.

Q. How long would she stay afloat with the hole in the port bow with that load? A. According to my figures, about 2 minutes. It all depends on the depth of the center of the hole below the surface.

Q. Suppose the crowd was toward the front where the exits were trying to get out, and left the rear end where the exits opened inward, and water was coming in at the rate of, I suppose, 3 tons a minute, wouldn't it— A. Just a minute.

5526 Q. How soon would it be before the bow of that boat would be so low that the water would come in the exits themselves as the men testified it did do? A. The water would flow into the hole at 7.3 tons per minute, and to put the boat down until the bow, or until the deck forward was under water, I would judge it would take about a minute and a half, or 2 minutes.

Q. The boat's tonnage was only 10 tons, and you had over 3 tons of people in her; how do you figure it would take you two minutes to fill her?

A. Your 10 tons is an error. That is gross ton- 5527
nage, but has nothing to do with displacement.

Q. You know the hull of that boat did not hold near 10 tons? A. I know the hull of that boat would hold more than 10 tons.

Q. What was the tonnage of the hull without the cabin? A. I cannot give you that, because that has nothing to do with displacement.

Q. You figured the tonnage of the boat including the cabin? A. Yes.

Q. And she did not have a license under that tonnage, did she? A. The displacement of this boat up to the 5-foot water line is 37 tons. If 5528
she was loaded down until she drew 5 feet of water, 5 feet draft, her displacement would be 37 tons, and if you are going to sink that boat by filling her with water to 5 feet, you have to put the difference between 37 tons displacement and the weight of the boat plus whatever the crew or cargo weighed—with 81 men on the men and boat weighed about 15 tons—so 37 tons displacement at the 5-foot water line minus 15 tons is 22 tons. That is, to fill that boat to the 5-foot water line, to sink her down to the 5-foot water line, would require 22 tons of water in addition to the weight of the boat plus the men in it. 5529

Q. I suppose you figured that water would come in those exits before the boat was full? A. It cannot come in until the deck is under water.

Q. She would go down head first, wouldn't she, with a crowd trying to get out the bow? A. I cannot say as to that for sure.

Q. You heard the evidence of these witnesses that the water poured in against them and they had difficulty getting out there? A. They did not say whether it came in the exits or in the hole.

5530 Q. You know very well it did. A. No, I do not.

Q. You testified to a lot of other things you don't know, then, just your opinion? A. I based a lot of my conclusions on figures and experiments, but I did not see the boat sink.

Q. What was the distance from the top of the seats to the top of the cabin, did you say? A. I did not say.

Q. Can you give me that? A. Yes, sir.

(Witness examines blue print.)

5531 A. May I have a plan of the inboard elevation? This is the midship section, and it is a different scale than the one I have with me.

Q. See if either one of those is what you want. (Handing witness blue prints.) A. From the top of the seats to the top of the cabin inside is 5 feet and 4 inches, on the average.

Q. What would you say was the height of the cabin from the bottom—from the floor? A. It is about 6.9 feet.

Q. Is that the outside? A. No, that is the inside of the roof at the center line.

5532 Q. How much of that is taken up by life preservers? A. A maximum of 6 inches, on all turn roof beams.

Q. That would lower the distance between the seats by 6 inches? A. Yes, that would leave about 6 feet and 4 inches clear above the floor. It actually varies from 6 foot 3 to 6 foot 6 head room, due to the sheer of the boat.

Q. What was the height of the seat? A. Above the floor.

Q. Yes. A. On the average, 18 inches.

Mr. Axtell: May we have those photographs of the inside of the boat? 5533

Q. You said a while ago that manholes on merchant vessels are required for exits for the crew, 254 inches square. What manholes did you refer to? A. I did not say they were required. I say escape manholes may be eighteen inches in diameter.

Q. Didn't you read from the Statute as to requirements of exits for the crew? A. Yes, sir.

Q. And did you not say you had seen these, many of them, complying with the rule, which only had 254 square inches? A. I have. 5534

Q. On what ship? A. The "Sibley", "Orizaba", several of the troop ships.

Q. Don't you know the vessels you mentioned were built before that act went into effect? A. No.

Q. And that the act did not require the reconstruction of the ships, you do know that, don't you? A. No, I doubt it.

Mr. Englar: I do not think it was a Statute he read. I think it was a regulation. 5535

Mr. Axtell: The Statute controls, and there is a Statute that controls, part of the Seamen's Act of March, 1915, and the "Orizaba" was built before that.

The Witness: I beg your pardon, she was built after.

Q. Where is she now? A. I don't know.

Q. What exit manhole are you talking about? A. I am referring to one in the fore peak.

5536 Q. You said in answer to counsel's question you were talking about a manhole for escape of the crew from quarters, an exit? A. Not necessarily.

Q. Oh, you did not? A. No.

Q. There are plenty of manholes, only 254-inch surface exit upon merchant vessels, aren't there? A. Yes.

Q. Going down into the fore peak and after peak, and going to the tween decks? A. Yes, a man is liable to be working there and be shut in, and have to escape.

5537 Q. They are not the exits required by statute as to and from the crew's quarters? A. No. The Statute does not apply to crew's quarters exclusively. It says wherever a man was working.

Q. You did not mean to convey to the Court the impression such an exit was sufficient according to the Statute? A. For an emergency, yes.

Q. That is sufficient for the crew's quarters exit? A. For an emergency exit.

Q. Where they have 25 or 30 men sleeping you say that is sufficient? A. If the condition of the structure and things did not make anything

5538 better.

Q. Can you give me the name of a ship even built before 1915 in which the exits either of them, from the crew's quarters, are less than that, or as little? A. I did not say these were from the crew's quarters. I would like to add the American Bureau of Shipping recognizes a manhole 12 x 16 as a standard size manhole.

Q. Those are manholes to go in the bilge? A. Yes, cofferdams, fore peaks, lazaret, coal bunkers.

Q. There is one from the after end of the shaft

alley required? A. Not a manhole, a shaft alley escape. 5539

Q. There is something on top of it? A. There is a door.

By the Court:

Q. Those are distinguished from the exits in the quarters? A. Yes, they are emergency exits.

By Mr. Axtell:

Q. The exits from the crew's quarters are usually doors, aren't they? A. Yes, sir. 5540

Q. And there are stairs leading to them? A. Yes, sir.

Q. And one opens usually on the well deck forward and on the poop deck aft? A. That depends. If between decks they may come in a passageway.

Q. There are two doors through which men can walk? A. Not always. I know several cases where there is one door and the other means of escape is a wooden portable shutter to escape from one room into the other.

Q. Give me the names of those ships. A. There are about 5 of the American merchant ships that have that, the "American Merchant", "the American Banker", the "American Farmer", the "American Shipper" and the "American Trader". 5541

Q. And there is one exit and this other one? A. In the crew's quarters one door goes from the crew's quarters to a working passageway, the other exit, the emergency exit, to comply with the requirement for two exits, is a small shutter going from one room to the other through a bulkhead.

5542 Q. How about two outdoors? A. They don't have to be outdoors. It only requires two from the room. I know ships where, in the forecastle, there is one exit that goes up on deck and the other goes into the chain locker, not exactly the chain locker, but a door over the chain locker.

Q. In those quarters do you know how many men there are, or how much space they have per man? A. I do not know exactly how much. I know they have at least 72 cubic feet, and 12 square feet of floor area.

Q. That is for sleeping? A. Living quarters.
5543 It is hard to design quarters with less. A bed takes up 12 square feet.

Q. You know they have three times that, including washing space, sleeping space, and eating space? A. They may have.

Q. And the average number of men in a merchant vessel in the forecastle would be about 25 men? A. That depends. It runs from four men in a room to forty.

Q. Is it a fact in places where they do have crowds the exits usually open outwards? A. No. I can cite a lot of ferryboats where they are sliding doors, and when the crowd is against
5544 them you cannot open them. The Central Railroad of New Jersey has several ferries which I ride on every day. They have two exits on the forward end of the cabin, that is, each end, and they have a clear opening 4 feet 3 inches, and there are sometimes not less than 500 or 600 people to get out through those exits coming through the front end.

Q. Do you consider that dangerous? A. In an emergency I would, because if those doors are shut they would be very hard to open.

Q. And they ought to open outward? A. swinging doors that pushed out would be preferable, I think. 5545

Q. What do you think of the door on the back end of this boat, with hinges on the inside? (Handing witness a picture.) A. I cannot see it in this. This is looking forward.

The Court: Haven't we been all over this on the examination before? Have you been interrogated about this before?

The Witness: I believe I have.

Q. That is a little coop door, a cubbyhole under the forecastle? A. That is a locker under the steering gear platform. 5546

Q. There was a similar door in the back that opened in too? A. It was not a similar door. Double doors in the back, two half doors.

Q. Opened in, didn't they? A. I believe so.

Q. Did you consider these windows of value as exits? A. As emergency exits I considered them very valuable.

Q. Even though the cabin was crowded with at least 86 people? A. I do not know how many people were in it, but no matter how crowded it was, an exit is an exit, quite as good in one—— 5547

Q. I thought you said on ferryboats where people were crowded against a door, even though it was a sliding door, you could not open it? A. I did, but I did not say it made the exit worse or better, if there was a crowd against it.

Q. Didn't you say it was dangerous and it would be better if it opened outward? A. Yes, sir.

Q. And it would be better if the windows were sliding sideways or opened outward? A. The

5548 only improvement on that would be opened outward. Sliding ones would not be any good. You could not put sliding windows there.

Q. It would be out of the question for people to put a life preserver on on that boat and get out? A. They could.

Q. If you even had 35 people and she went down in two minutes or less, those people would have difficulty in getting out of the doors in front with a life preserver, wouldn't they? A. They would not have to put the life preserver on. They could carry them in their hands.

5549 Q. That is what I am trying to get you to admit. You would have to carry them in your hand, isn't that right? A. That would be a matter of what the indivdual wanted to do. If I was in an accident I would carry a life preserver in my hand. The first instinct in an accident—I have been in three—is to get out and get on top as quick as you can, and if you cannot get a life preserver handy you don't wait. On ferryboats they have a few life preservers under the seats on one side, and there may be 500 people there, and there would not be enough for 200 people.

5550 Q. Should the life preservers in this case have been carried on top of the deck or the roof? A. Not necessarily.

Q. Wouldn't it have been better? A. In some kinds of accidents, yes, and in others, no. Ordinarily they stow them to meet ordinary accidents like fire, where the element of time is a little longer, people have more time to do things. Life preservers are generally stowed in the most convenient place for the owner to stow them on the ship.

Q. What was the number of square feet in the pilothouse? A. I have not figured that yet. 5551

Q. Can't you give it to us by your rule there, on the blue print? A. I can give it approximately. That is difficult to figure, it is a circular section, to give you the exact area. I can figure it out.

Q. Give it approximately.

The Court: Couldn't we finish the examination and have him submit that later, or do you prefer that now?

Mr. Axtell: He has been giving 153 square feet, including the pilothouse. 5552

A. The area of the platform in the pilothouse is 21.1 square feet.

Q. Taking that off 153 square feet you have 132, is that right? A. You have 132.7.

Q. That is the available floor space allowing the space on the side of the engine to be used, isn't it? A. Yes, sir.

Q. You admitted the other day that that space could not be used for anybody to stand up because there was not room. A. I admitted that when people were sitting down. I want to correct myself there. I did not admit it could not be used. I admitted when people were sitting down it was a rather tight place for people to stand in, but with this assumption I am working on here now, everybody is standing up, and people can stand there, and take no more room with their feet—— 5553

Q. There was a box around that motor before? A. Yes, sir.

Q. Looking at Exhibit 24. And if you take away

5554 that space how much more does it reduce it below 132? A. I have taken that space away in my 153.

Q. So you have a total of 132.7 square feet for 86 people to stand up in? A. Exclusive of the pilothouse, and I do not know how many people were standing up.

Q. You said the other day that when you got 97 men in this hull without any cabin on even, and with men sitting in the doorways, that you had every man you could possibly crowd into it? A. I did not state it exactly that way.

Q. What did you say? A. I said with 97 men in the boat sitting on the stairways and not in
5555 the doorways, only sitting on the steps, and there was only one on the captain's platform, only the one man in the pilothouse, the boat was crowded.

Q. What is the difference between 86 and 97, that is 11. You say that in spite of the fact that with the cabin off you could only get 97 in her, that she was seaworthy, in your opinion, to carry 86 with a cabin on across the river—didn't you say that? A. I don't know whether I said about 86 men or 81.

Q. Didn't you say that to Mr. Englar this
5556 morning, that she was in your opinion seaworthy to carry 86 people across the river with a cabin on? A. Yes, sir.

Q. With the cabin on she had when the accident occurred. Now tell me what is seaworthiness? A. Ability to endure the ordinary perils of the sea.

Q. Endure them? A. Yes, sir, ordinary perils. That is my definition of it. I do not know what your definition is.

Q. Does the seaworthiness of a vessel have any

relation to the cargo she is to carry, or the voy- 5557
age she is to make? A. Yes, sir.

The Court: Isn't that all a legal subject?

The Witness: I do not know the legal part of that.

Q. Then, crowded to the extent that you could just barely get 11 more men in her, you still say she was reasonably safe to carry 86, is that your definition or application of seaworthiness? A. Not exactly. When you said 86 men in her, or 5558
97, you must remember there is a lot of space in there that they are not occupying, for instance, the engine space.

Q. Did you or did you not say the other day with 97 men in she was so full you could not get any more in, and if they could you would like to see it? A. That is sitting down or standing up. It would be possible if you wanted to put more men in, to put 4 or 5 more men in the pilothouse, or with the captain.

Q. Does that picture we introduced in evidence from your portfolio show a crowded condition in that boat? A. Only fairly crowded, not 5559
as bad as the subway.

Q. Do you advocate running little boats of this character as crowded as the subways? A. No.

Q. Do you think the subways, crowded as you described, are furnishing adequate, reasonably safe transportation to the public? A. No, I do not know how safe it is——

Q. Do you think if you changed that condition to a frail boat like this in the Hudson River, full of ice, you have made the condition any safer?

5559 Mr. Englar: Did you finish your last answer?

The Witness: No.

(The stenographer read back the answer.)

A. I said I did not know how safe it was. I knew it was not comfortable. The number of deaths or accidents is small.

Q. But in case of some serious accident the fact there are so many crowded into such a small space would militate against their chances of survival, wouldn't it? A. There would probably
5561 be more deaths.

The Court: Isn't that all argument?

Q. You designed the new boat, the "Reliance," didn't you? A. I did not. I do not know about it.

Q. Your firm designed it, didn't it? A. It did not.

Q. Were you consulted about the "Linseed King" at the time of this disaster? A. Was I consulted?

5562 Q. Yes; you made some measurements? A. I was asked to make a survey of the boat along with some other men and find out what condition she was in.

Q. What is the business of your firm? A. Naval architects, marine engineers, and ship brokers.

Q. You consult with owners concerning building and rebuilding, repairs of vessels, do you not? A. Certainly.

Q. You, I suppose, became cognizant of the

needs of this company for a ferryboat in the course of your investigation, didn't you? A. I cannot say that I did. I do not know what you are driving at—— 5563

Q. You want to find out what you are going into before you answer, is that it? A. You asked if I designed the "Reliance" or our firm. No, we have had nothing to do with it.

Q. You answered that question? A. Yes, sir.

Q. Is there any difficulty with this question?

(The question was repeated by the stenographer as follows: "You, I suppose, became cognizant of the needs of this company for a ferryboat in the course of your investigation, didn't you?") 5564

A. I assumed they would probably have another boat sometime.

Q. You familiarized yourself in the preparation of your testimony in this case with the use to which this boat was put, the "Linseed King"? A. Yes, I knew what she was used for.

Q. Was your opinion sought as to the availability or usefulness of this "Linseed King" for reconstruction or repair to be put back into the same service? A. At the time we made the survey we were to survey—— 5565

Q. Can't you answer yes or no to any question? A. No, I cannot.

Q. I insist on an answer yes or no.

The Court: He is an expert. Aren't your recent questions aimed at a different boat of the petitioners? Isn't that testimony I excluded before?

5566 Mr. Englar: I think it is clearly aimed at that.

(The stenographer read the question as follows: "Was your opinion sought as to the availability or usefulness of this "Linseed King" for reconstruction or repair to be put back into the same service?")

A. No.

Q. In your opinion, I will ask you now, is the "Linseed King," the one we have had here, was she of proper design and construction so that she ought to be repaired and re-equipped and put into
5567 the same service to carry these 220 men back and forth on the Hudson River daily? A. It would be hardly worth repairing now, it is so far deteriorated.

Q. If you were designing a new boat for that purpose, assuming there are 126 men living in New York, daily employed, and that casual employees of 120 or so per day are used on various shifts while they are unloading vessels, to whom transportation is to be furnished, would you design a new boat just like the "Linseed King"?

5568 Mr. Englar: I object to that, because Mr. Axtell has told about a lot of men employed there, but how many who would ride on the boat is speculation. The witness cannot tell by how many who worked at the plant or lived in New York, how many would ride on a trip.

The Court: I think inasmuch as the witness has testified that the "Linseed King" in his opinion was seaworthy to carry 86 people, I ought to let the other side draw out his opinion.

A. It would depend on the number to be carried per trip, and if they were not going to carry any more than the "Linseed King" carried, I would say she was all right. 5569

Q. Big enough for 86? A. For their every-day use it would be big enough. There is no use designing a boat twice as big as the work she is supposed to do.

Q. Would you put bulkheads in her? A. Yes, I would in a new boat.

Q. Would you put metal sheathing on her bow? A. Yes, if she was running in the ice.

Q. If she was running in the ice and she were loaded with 86 men on the lines of the "Linseed King," how far above the water line would you bring the sheathing? A. 6 inches. 5570

Q. You would not bring it to the gunwale? A. Ice don't cut there.

Q. Does the vessel roll? A. Yes, sir, but it does not necessarily cut when it rolls.

Q. Considering the fact a vessel of this type does roll and considering the sheer of her bow, there is no doubt in your mind now but what the ice in some floe as she ran along did cut that hole in her starboard bow, is there? A. I do not know that ice cut it. 5571

Q. You said so in your report? A. I said apparently.

Q. That was a slip, wasn't it? A. I have not had time to investigate the drafts.

Q. You did not know that report was going to be presented here at this investigation? A. No. It would not have made any difference anyway. I would have put it in just the same.

Q. It would not be necessary for the boat to have her stern end 15 feet out of water in order

5572 to get that cut if she happened to be listing to the starboard side? A. If that cut was parallel to the water line the stern would be out of the water, no matter how it listed.

Q. If on an even keel? A. If on an even keel you could not have that cut parallel with the water line.

Q. You do not know of any other way it got there? A. There are lots of ways I can imagine. I can imagine she might come——

Mr. Jayne: I object to what he imagines.

5573 Mr. Axtell: You can examine. Mr. Jayne will examine him on the number.

Cross examination by Mr. Jayne:

Q. You did not imagine before you made the report, you thought to the best of your ability, you used your logical brain in so far as you have one, is that right, before you made that report? A. Yes, sir.

Q. Have you had any change of heart as to the available square feet of space in this cabin 5574 since we figured it out here a few days ago? A. No.

Q. We figured it out 113 square feet, didn't we? A. I don't remember what we figured out. We figured 63 when I was on the stand.

Q. You don't remember figuring 113? A. No.

Q. 63 square feet we figured out was the square feet of area of standing room left available when you had 36 men sitting down, is that right? A. Not exactly.

Q. What is wrong? A. In addition to that we

deducted all space abreast the engine fore and 5575
aft, and the engine space, all the space aft where the life preservers were, and the rear exits, all the pilothouse space, all the space on each side abreast and in between the forward exit stairs.

Q. Each one of those, as we deducted it, we discussed it at the time—we discussed each one of those deductions, didn't we? A. Yes, sir.

Q. And you concurred in the opinion those deductions were necessary deductions considering the necessities of keeping the boat seaworthy, by keeping certain spaces open for certain necessities, for example, we kept the space open where 5576
the stairs were, because the stairs were spaces on which people had to move, that is, even if the boat were not to sink, the captain or a man with a line might have to get out of one of the stairways, and we kept that open, didn't we? A. My answer is yes, provided we do not consider all those deductions are not available space for a man to move around in. We were talking clearly of floor space for a man to stand on.

Q. We were talking about floor space for a man to stand in? A. And not available space that they can move around in.

Q. We agreed the floor space the men had to 5577
stand in, that is also the space they have to move about in, isn't it? A. Part of it, not all.

Q. We agreed the space was not available for people to stand in or even move about in between the forward steps because there was a doorway there that opened outward that led under the captain's—what do you call it? A. Just a locker underneath there. It wasn't any particular place.

Q. It was not any particular place. There

5578 were life preservers stored under there, do you know that? A. Yes, sir.

Q. It would have to be opened, there would have to be room to open it if you were going to get a life preserver out? A. Yes, sir.

Q. And there were other things there, that led to the gasoline tank, is that right, to the place where the water came in before, a storage place for equipment, was it, or don't you know? A. It was just a locker.

Q. All right; just leave the life preservers under there. We decided in order to open that door
5579 you could not have people in that space and you could not count that space in as available space for a passenger? A. When we were talking about it——

Q. Never mind. Let us talk about it now. Is that available space for passengers where it is necessary to open the door to get life preservers out? A. Yes, sir.

Q. You say that is available? A. Certainly, available to move about in, and anybody who wants to open the door might get on the stairway.

Q. You have other people standing on the stair-
5580 way, by your calculations. How can they step there if other people are there? A. They are not going to stay there forever.

Q. Don't let us wander into the Biblical argument about angels standing on the point of a needle. Now let us be reasonable.

The Court: Who was it talked about angels on the point of a needle?

Mr. Jayne: Biblical philosophers used to have an argument as to how many angels

you could get on the point of a needle, and this gentleman is the nearest to it as any modern man I have ever seen. 5581

Q. Now, won't you please try to be reasonable although——

The Court: I really think that criticism is not called for. If you will take it calmly and give him a chance to answer, I am sure he will. He is a man of cool and calm disposition and he seems to me to be a man who keeps his temperament. 5582

Q. It is your opinion, is it, that this boat is perfectly safe and seaworthy if you use the available space and include in it the steps leading out, is that right? A. Certainly; that is what they are for, to get in and out. If you cannot use them they are not available.

Q. You expect one of these gentlemen in this boat to stand on these steps and adjust his life preserver when the other eighty-odd are trying to get out? A. No.

Q. It would not be available space for a man to put on a life preserver, would it? A. The first man who would put on a life preserver would get out. 5583

Q. Answer yes or no. Would it be available space for a man to put on a life preserver? A. Yes, sir.

Q. It would? A. Yes, sir.

Q. With 81 people trying to get out at his back, the first man could stand there and put on his life preserver on those steps, is that your judgment? A. He would be trying to get out with the rest.

5584 Q. Would it be available for him to put on a life preserver? A. If he wanted to.

Q. You say he could reasonably do it, do you? A. Why, yes.

Q. And that is your same judgment you have been using here. What about the back steps? The same way, is that right? A. Yes, sir.

Q. That would be available for his use to put on a life preserver? A. Certainly; any place a man could stand or move about is available space, as I see it.

Q. Theoretically? A. No, actually.

5585 Q. You said there was not space enough between the housed-in motor and the people sitting on the other side of it, on your testimony before, for men to stand? A. Not with people sitting on the seats and be comfortable, I said, but if the people are all standing up——

Q. I think you testified there would be 6 inches on one side and 12 inches on the other end, that is, at one end there would be a space of 6 inches in width if people were sitting down? A. The space left.

Q. At the after end of the box, and 12 inches at the forward end? A. A person can easily

5586 stand in that space.

Q. You are changing your mind by saying there is plenty of room for extra people, are you? A. No. That day you wanted to leave it open for a passage.

Q. You agreed that was a proper thing to do in operating a seaworthy boat? A. I said with 81 men we did not need it for anything else.

Q. Don't you recognize any necessities inside this cabin for space for the operation of the boat? A. Yes, sir, but that space is not necessary.

Q. A man cannot get to the engine by standing 5587
on another man's head standing there, can he? A. A man can move and let him through.

Q. When packed as thick as in the subway a man can run to his engine? A. I did not say it was packed as much as the subway.

Q. Was that pipe in the boat when you were there? A. Yes, sir.

Q. What is it for? A. An exhaust pipe from the engine.

Q. Are the engine exhaust gases hot? A. They are, but there is a water jacket on there.

Q. On the pipe? A. Not on the pipe, but on 5588
the muffler.

Q. So the pipe doesn't get hot? A. It doesn't get hot to burn any.

Q. Not if you lean against it with your ankle? A. You could hold your hand on it.

Q On some motorboats? A. I know this particular boat.

Q. Did you ever see any motorboats get hot in the exhaust pipe? A. Not any boats I have had anything to do with.

Q. Did you figure how much area would be taken up by that pipe running that length? A. 5589
Very little.

Q. Would you expect people to stand on the pipe or sit on it? A. Stand each side of it.

Q. Did you reduce the space area any when you figured with me there was 63 feet? A. Not when I put 81 men on the boat.

Q. I am not talking when you put 81 men on the boat. I am talking of our figures. The other day we figured there was 113 feet of available floor space, available. A. I am not sure we made

5590 that figure. That pipe is off the floor 3 inches and people can——

Q. Get out your slide rule.

The Court: Can't you refer to the testimony on this?

Q. You know that. Won't you help us not to have to figure it over again? A. I figured it this morning.

Q. I am not talking of computations in your chamber, I am talking of computations you made in plain sight in this court room, when I was
5591 standing here, you were there, and the Judge right there, from this plan. You remember we came to 63 square feet of floor space, don't you? A. I remember that.

Q. Then we added 50 more square feet of floor space, if you just left the seats out, that is, if the people on the seats were standing up—wait a minute, I will explain it to you; with 36 people sitting down here we figured the available floor space left after they were sitting down, and figured it at 63 square feet, do you remember that? A. Yes, that is provided the 63 feet was
5592 obtained in this way from this plan. We deducted forward of that line, that is right, isn't it?

Q. Yes. A. We deducted——

Q. Will you say what that line is? A. This line is the after side of the forward stairs, the after end of the forward stairs. Then we deducted everything aft of the forward end of the life preservers back here.

Q. That is right. That is aft of the forward end

of the steps also. A. Yes. Then we deducted a strip 2 feet long the full length of the seats. 5593

Q. That was allowed for 36 people to sit down? A. Yes. We allowed a foot beyond the seats, and that is a great plenty.

Q. You said you were yourself 26 inches instead of 24. A. My feet don't take as much room up as my knees. Then we deducted everything from the after end of the engine to the forward end of the engine, all the way across there.

Q. Oh, no, we had people sitting there. A. We deducted the space where they sit from side to side. 5594

Q. Is it correct to say we deducted the area of the engine box? A. Yes, sir.

Q. And after we deducted the area of the engine box we decided that there was not available space in the narrow width between the sides of the engine box and where the people sat? A. When they were sitting down. We decided to leave it out at the time.

Q. When we got through with that we had 63 square feet of space left, didn't we? A. Yes, sir.

Q. That was for people standing up? A. Yes, sir. 5595

Q. And that left an additional 50 feet of space up to the seats on either side, to the edge of the wooden seats themselves, that is, we allowed an extra foot for the extension of people's legs along both sides, did we not? A. Yes, sir.

Q. And adding that 25 feet on a side gave us 50 more feet? A. I want to check up whether it is 25 feet.

The Court: What is the necessity of going all over this again?

5596 Mr. Jayne: Only the same necessity Mr. Englar had for going over it again. I objected at that time because it was already covered, and your Honor ruled he could go into it again, and the result is they stretched this 113 feet to goodness knows how many. I am trying to get it back again.

The Court: Your idea is this morning he testified differently on that subject than before?

Mr. Jayne: Yes.

The Court: Well, then, why don't you allow it to stand? If you are right, it would 5597 go against the testimony, and now you are giving him an opportunity to reconcile it.

A. We are talking about the available space in the cabin.

Q. I do not know what you are talking about. Have I asked you a question and are you answering it? A. You said I was stretching the space.

The Court: Let us not have these acrimonious discussions.

Q. You have 25 feet. A. 25.3, to be exact. 5598

Q. That makes, as a practical matter, 113 square feet, 63 and 50, doesn't it? A. Yes, that is 113 square feet.

Q. Now, with 88 men computed, that gives each man 1.28 square feet of space. Do you say that it is reasonable, that a boat owner is using reasonable care that gives 88 men 113 square feet of floor space on the interior of a cabin when that allows each man on that computation 1.28 square feet? A. That is not correct.

The Court: Aren't you asking the wit- 5599
ness to decide the judicial questions in this case?

Mr. Jayne: That is what counsel for petitioner are doing when they ask him if it is seaworthy. They called him on his opinion as to seaworthiness. That is the issue here, to find out if the boat is seaworthy for that number.

The Court: All right, let us proceed.

A. As you stated it the area is wrong; you stated 113 square feet for 88 men.

Q. That is what I am talking about. A. And 5600
you are disregarding the area of the seats, that 36 are sitting on the seats.

Q. The top of the seats is not floor area, is it? A. No.

Q. I am talking about floor area. Will you please accept my question unless it is objected to by your counsel? A. I cannot answer it because 36 of the men are on the seats.

Q. I went over this before. Do you anticipate they will stand up when somebody says the boat is sinking, or do you think they will still loll there? A. I think they will stand up. 5601

Q. Do you consider 113 square feet of floor area a reasonable provision of floor area for 88 men, yes or no? A. I cannot answer that yes or no. I will say in case you have that many men on and they all stand up, you have to add a little more floor space.

Q. You do not consider that sufficient— A. Now let me get it straight. We had 63 square feet. Then we added 25 feet on each side.

Q. Making 113. A. We should add a little at the engine if they are standing up, because if

5602 they are standing up it is available. Every speck of the space between the seat and the engine box is available if the men are standing up.

Q. How many feet do you want to add for that? A. We have to add the length of the box, 10 feet, averaging three-quarters each side, that is 1½, that is about 15 square feet, that makes 128 square feet.

Q. How wide do you say this average is? A. I have not measured it. It runs from 6 to 12 inches.

Q. Where this man stands up, who was sitting
5603 on the seat, when he stands up, he is going to take up more space ahead of him in front of the seat, isn't he? A. If they are all standing up they can fill up this space.

Q. When those men stand up and want to get off this boat they are going to move forward and back in that space, they are not going to stand there like dummies, are they? A. No.

Q. Now have you available space for men there when they are moving? A. A square foot of space is as available there for standing room as here. (Indicating.)

Q. No, it is not. Do you say it is available?
5604 Here it is only 6 inches when sitting down. A. His knees stick out.

Q. That 6 inches is available for a pygmy, is it?

The Court: Don't you think you are argumentative with the witness instead of interrogative?

Mr. Jayne: He is argumentative. I ask him questions and try to limit him to yes or no, and he gives an argumentative answer.

The Court: An expert witness is supposed to be advisory, and he cannot be limited to yes or no. He must be permitted to explain himself if it will be of help to the Court. 5605

Mr. Jayne: When he makes an argumentative answer, I don't see how it can do otherwise than give rise to an argumentative question.

The Court: You have the last word. Proceed.

Q. You do not expect to stand a man in a space 6 inches wide, do you? A. No, and I would not be standing a man in a space 6 inches wide. 5606

Q. You say 113 square feet, leaving out our argument as to whether there is more space there, you say 113 square feet of space is not sufficient for 88 people? A. No, I would not say that.

Q. You say it is sufficient? A. I would not say that but——

Mr. Jayne: Now can I get an answer from this witness, your Honor?

The Court: You interrupted him. 5607

A. I maintain there is more than 113 square feet, and I maintain the square feet there was sufficient for the men to stand there.

Q. Assuming there is 113 square feet of available space, kindly bury your idea these men could walk on the seats, and so forth, fly around on the roof; let us keep down to 113 square feet; do you think 113 square feet of floor space is reasonably sufficient, available floor space, is reasonably sufficient for 88 men? A. Yes, I do, under the conditions that existed in this boat.

5608 The Court: He has answered that several times.

Mr. Axtell: That is enough, Mr. Jayne.

Q. On these trains where you counted a couple of different trains, you counted the space, what did you say you had in the area of space in the vestibule of that train? A. 31 square feet of area.

Q. How many people did you have in there? A. 24. I was one of them.

Q. Where was that train? A. This was on an I. R. T. train about a week ago.

Q. You had 21 people? A. 24 people in 31
5609 square feet. The available area was 4 feet long, fore and aft in the car this way, and 7 feet and 9 inches wide, and they had 24 of us packed in there.

Q. That would be how many square feet a person? A. 1.29.

Q. You think that was quite all right too? A. It was a little uncomfortable.

Q. You bear in mind in this 131 feet it would be 1.28 here? A. Yes, sir, but in the case of a subway we had a bulkhead wall here and you could not stick your elbows outside the train.

Q. You did not have water in the subway
5610 either, or ice, or life preservers? A. I have seen water in the subway.

Q. Where was that train? A. Between Brooklyn Bridge and Grand Central Terminal.

Q. What time? A. About ten minutes to nine in the morning.

Q. Did you just take that trip purposely to count them? A. No, I take that trip regularly every day, but generally come earlier.

Q. That is the time of congestion on our subways, isn't it? A. Yes, right around that hour.

Q. That is just as bad as you can find them packed anywhere on a trip from Grand Central down to Brooklyn Bridge, you cannot get them worse anywhere? Do you know any place they get them in worse? A. I have heard they get them in worse on the Seventh Avenue line. 5611

Q. Have you ever seen it worse anywhere? A. No, I did not happen to ride there.

Q. You have not seen any place where it was worse? A. Yes, I have seen worse conditions than that.

The Court: Can't we make more progress here? 5612

Q. There was another subway train you rode on that you counted the number of people in some area? A. I did not count them. I was quoting experiments by a professor.

Q. I thought you said between the seats. A. Yes, sir.

Q. Was that the same train? A. No, that was a different one.

Q. Did that arrive at the same result? A. No. It was not crowded as bad between the seats as in the vestibule. The time I counted there were 42 people standing on 59.2 square feet. 5613

Q. You, as a ship builder, do not think that the captain ought to be allowed the space the captain had in the pilothouse of this boat for his own use and the use of those aiding him, do you? A. There would be no objection to letting him have it. If he wanted a helper to ride with him, I do not see an objection to that. In every pilothouse you have two at least.

Q. The pilothouse is not for the use of passengers? A. No, but you can have an officer or quartermaster on duty.

5614 Q. How high was the floor of the pilothouse above the floor of the inside of the cabin?

The Court: Doesn't that appear already?

A. About 2 feet and 7 inches.

Q. And then there was an iron rail extending all the way across? A. Not all the way across.

Q. There wasn't? A. No, sir.

Q. Wasn't there an iron rail separating the cabin from the pilothouse?

The Court: He answered yes, but not all the way across.

5615 A. There was one extending 4 feet and 7 inches across there, there was an opening at each end about 15 inches.

Q. Would you consider this space available between the forward stairs even though it was the only available space for entry to each of those pair of stairs and although it was also the space that was used for the opening of these doorways, both had those combined uses in case of emergency, would you still consider it available floor space for the use of passengers in putting on life preservers and things of that sort? A. Yes, sir, I would.

5616 Q. These figures you have given about water coming into this boat were purely academic, were they not, inasmuch as you determined that these holes were about a foot above the water line of the boat, so that water would not come in them, you are just assuming water came in, that is academic, because you really don't think it came in? A. I know it came in.

Q. Why did you testify the other day then those holes were anywhere from a foot to two feet above the water line? A. I did not testify to any such thing.

Mr. Jayne: That is all. 5617

Mr. Englar: I have a question or two.

Re-direct examination by Mr. Englar:

Q. In your calculations as to the amount of water that would come in the boat through these holes, I understand your answer was based on the assumption that the holes would be continuously in the water? A. Yes, sir.

The Court: When you speak of holes, do you mean those appearing on the starboard side?

Mr. Englar: And port side too. I did not ask about that, but my adversary did. 5618

The Court: I noticed that. I was wondering why you did not.

Mr. Englar: A great deal of water would come in the port side, and I wanted to bring out the starboard hole would not sink the boat rapidly, and it must have been the one on the port side.

The Court: I wanted your idea.

Q. If the holes were only intermittently under water, it would take that much longer for her to fill up and sink? A. Yes, sir.

Q. Would the fact whether the boat listed or not affect the question whether this cut on the starboard side was parallel to the water line? 5619
A. No.

Q. That would affect the question of whether it was above or below or at the water line, but not whether it was parallel to the water line? A. That is correct.

Q. Did you figure out for me how many life preservers could be put under the roof of the cabin? A. Yes, sir, I did.

5620 Q. How many? A. I will refer to my notes.

Q. You can do that later. A. I have it already. It is 51.

Q. There are two or three things you were to figure out, if you will let us have those after recess.

Re-cross examination by Mr. Axtell:

Q. I believe you said today that when this test was made over at the yard you had 97 in, but it did not take up all the available space? A. No. I said 80 men in the boat that day.

5621 Q. You did refer to your testimony the other day when there were 97. A. I said I had 97 men in, and I had 80.

Q. When you had 97 in, did you say it was crowded or not? A. Crowded where they stood up, but in that case there was only one man in the cabin.

Q. I direct your attention to page 424, and ask you if you said this in answer to the question, to the Court's question: "Let us have it." Your answer: "97 is the maximum number that could be jammed into that boat"? A. That is

5622 not including the pilothouse.

Q. Is that statement correct? A. Yes, I was speaking that time entirely of the cabin.

Q. And you were telling the truth? A. Yes.

Re-cross examination by Mr. Jayne:

Q. Petitioner's Exhibit 10, do you know how many were on when that picture was taken? A. Yes, 80 men on when that picture was taken. You will observe no man in the captain's place——

Q. No, I do not. I observe to the contrary. 5623

The Court: That is Exhibit 10.

A. There were 80 men in the boat at that time, and there is nobody standing in the captain's place at all.

Q. They are sitting? A. No.

Q. Will you show me where the captain's place is here? A. The captain's place extends from there to up there (indicating). It is a space around like that, across there. That is the platform right there where the captain would stand. Nobody is there at all.

5624

Mr. Englar: Suppose you mark that with ink.

The Court: Mark it with a cross.

(So marked.)

Recess till 2 P. M.

Met pursuant to adjournment at 2 P. M.; present as before.

CHARLES W. CLAYTON, recalled on behalf of the petitioner, in rebuttal, testified as follows:

5625

Direct examination by Mr. Englar:

Q. You have testified before in this case? A. Yes, sir.

Q. Mr. Clayton, in your opinion, taking the "Linseed King" in the condition in which she was just before this accident, how many people was she seaworthy to carry back and forth across the North River? A. Why, I would say with 90 she was perfectly safe at all times.

5626 Mr. Jayne: I object to this on the same ground I did the other witness. This witness already testified to that very fact.

The Court: If he has, what is the necessity of going over it again?

Mr. Englar: I did not ask him a thing about that. On cross examination he was taken——

The Court: Proceed then. Objection overruled.

Mr. Englar: That is all I have to ask him.

5627 The Court: She was able to carry how many?

The Witness: 90.

Mr. Englar: That is the only question I wanted to ask him, Mr. Axtell.

The Court: What does he do, what is his occupation, so that I may have something more in mind about him?

Mr. Englar: He builds and runs boats; he testified before, you know. He lengthened this boat and has also run boats, carried passengers around the harbor for years.

5628 Cross examination by Mr. Axtell:

Q. I understand you just testified you thought this boat was reasonably fit to carry 90 people? A. Yes, sir.

Q. Did you ever see 90 in her? A. I never counted; I do not know.

Q. How could you render such an opinion, then? A. I have run across the river at other times with other boats, smaller and bigger. My practical experience is what I talk about.

Q. Mr. Clayton, did you ever run a boat like

the "Linseed King"? A. Why, yes; not exactly like that, but I have run different boats. 5629

Q. Give me the names of them. A. The "Gladys" was one.

Q. What was her size? A. She was 26 feet, and 7½ feet beam.

Q. An open boat? A. An open boat.

Q. No windows or cabin in her? A. No.

Q. How many did you carry in her? A. 25, I claimed she was safe with; I took 35 once across.

Q. There is no comparison between that boat and her load and the "Linseed King" and her load? A. Why isn't there? You can take the capacity of the two boats; one will carry three times as many as the other. 5630

Q. Is that as close as you can come, from your practical experience? A. No, not exactly.

Q. Well, what others? You said you had other boats? A. I figured out what the capacity of that boat was as near as I could, and figured she was about 14 tons. Then I figured out what 90 men would weigh, less than 7 tons, so she would not be overloaded.

Q. You are calculating just on the weight, just the weight? A. Her capacity to carry the men, yes. 5631

Q. You could carry more than that in weight in sand or coal or something like that? A. Sure; that is the way I figured it.

Q. You were not figuring on human beings, and figuring on windows that opened in, like that? A. No, I didn't figure on that.

Q. And the number of exits and the absence of exits, and all that sort of thing? A. No, I did not.

5632 Q. That would be a different proposition, wouldn't it? A. I only figured what the weight would be of the passengers, that is where I got it from.

Q. You wouldn't carry 86, or much less 90 men in a boat like that in the winter time with ice in the river, would you? A. Well, she would take them very easily.

Q. You would not think of running this boat in the ice, would you? A. Well, I have done it; I have run boats in the ice all winter, run her all winter but two weeks.

5633 Q. I say, you would not think of running this boat? A. Why wouldn't I?

Q. As a regular ferryboat? A. Yes.

Q. So that now it is your opinion that this boat would be seaworthy to run in the ice? A. I say I would not be afraid to run her in the ice.

Q. Do you remember when you testified the first time you came into this case a couple of weeks ago? A. What was the question?

Q. When you said she was a good boat, but you would not say anything about running her in the ice? A. I didn't say that.

Q. You didn't say that? A. No, I wouldn't 5634 answer your question; that is all.

Mr. Englar: There was one question I neglected to ask him. May I ask him now?

Mr. Axtell: Certainly.

By Mr. Englar:

Q. Mr. Clayton, did you express any opinion to Mr. Storey when you lengthened this boat as to how many people she could safely carry? A. Yes.

Q. What did you tell him? A. I told him she

would carry all that could get in her cabin, and all that could get on top of her, as far as that went, but to carry them good and seaworthy, 60 people, I believe I told him. 5635

Q. I said, did you have that conversation at the time the boat was lengthened? You did have such a conversation with Mr. Stover at some time? A. It was when the pilothouse was put on.

By Mr. Axtell:

Q. Do you remember this on your direct examination, page 224: "Q. Do you remember what sort of an engine it was? A. Yes, Lathrop 4 cylinder, 40 horse power. Q. A new engine? A. Brand new." These questions are by Mr. Englar. "Q. After this boat had been lengthened and a new engine put in, what would you say, Mr. Clayton, as to the seaworthiness of this boat for inland navigation? A. Why, I claim the boat was perfectly seaworthy any time in the Hudson River outside of real heavy ice, something like that; I do not call that seaworthy anyway. What I call seaworthy is a boat that goes through the sea; running into ice is a different thing, in my opinion. I am saying she was seaworthy to go across the river at any time in any kind of weather with a load of people, or without people." 5636 5637

The Court: Inasmuch as this was brought out by you, why are you questioning him now on it?

Mr. Axtell: That was his direct testimony.

The Court: That was his direct testimony?

Mr. Axtell: Yes.

5638 Mr. Englar: But I did not ask him anything about the number of people she could carry, I did not go into that at all.

Mr. Axtell: You asked him how many people she could carry.

Mr. Englar: Today I did, yes.

The Court: He had interrogated the witness on direct examination, had he not?

Mr. Axtell: Yes.

Mr. Englar: Yes, sir, but generally without reference to any particular number of people. But since the questions have been asked as to whether she was

5639 seaworthy as to any particular number of people, I have recalled him to bring out that point.

The Court: Is this rebuttal?

Mr. Englar: It is rebuttal on that particular issue.

By Mr. Axtell:

Q. You do not want to change your testimony on that point? A. No.

Q. You were considering in your answer to Mr. Englar he didn't mean running in the winter

5640 time? A. That is the way I take it.

Q. And did you also assume that the boat was like she was when you built her or when you had something to do with her building, with canvas curtains on the side instead of glass windows? A. Oh, you mean when, after the accident?

Q. You did not put those windows in her, did you? A. No, sir, I did not.

Q. You have never seen her with those windows in her, have you? A. Not until I seen her raised out of the water that day.

Q. Until after the accident? A. Yes.

Q. You would consider her seaworthy to carry 90 people jammed in her, and with just the 22 inch exits at the front end and opening out and the rear exit opening in? A. That has nothing to do with what I said about her carrying capacity. 5641

Q. Flotation is what you mean really, that is, she could float that many? A. Oh, she could carry them. In regard to accidents, I am not talking about that, I never did on my estimation.

Q. Do I infer correctly you would not consider her a safe boat to run with a cabin like she had? You can see the inside of the boat here in this picture; get some idea of it. A. I seen it.

Q. With only two exits in the front, about 22 inches wide, and the rear exit, opening inwards, and all the windows opening inwards, you would not consider it safe for 90 people to ride in a boat like that, would you? A. That does not make any difference; they have got two exits there, and if one opens backwards, most of the boats only have two exits. 5642

Q. That is, these two exits in the front open out? A. Yes.

Q. But the one in the rear opens inwards? A. That don't make any difference; the steps is there and they could not close it off. They could not keep them from opening the door, because the steps occupy that space, and they could not get there to stop them from opening the door. 5643

Q. You think a lot of people crowded in there would not keep them from opening the door? A. They could hardly have done that, very well; they could hardly have gotten up on the steps.

Q. The fact only one person did get out of that rear door would not influence you——

Mr. Englar: I object to that; the evi-

dence is contrary to the assumption my friend makes.

Mr. Axtell: One person is the evidence, as I recall.

Mr. Englar: You called one person, but that person testified he saw other people go out that way, but could not say how many.

Mr. Axtell: All right, we won't argue over that question.

Q. You are not making boats any more, are you? A. Not much now, no.

Q. You are fishing for a living, aren't you? A. No, sir, I am not.

Q. You were fishing last year? A. Yes, I was, but I wasn't doing it for a living, though.

Q. You weren't? A. No.

Q. Didn't you tell me you were making $25 a week fishing? A. I did at that time, but I was not doing it for a living; I was doing it for a pastime.

Q. You were not doing anything else for a living? A. I do not have to.

Q. You were selling the fish, weren't you? A. Oh, yes, I sold them.

Mr. Axtell: That is all.

Cross examination by Mr. Jayne:

Q. How many people would you have standing up in this boat with this load of 90 people on? A. I don't know anything about it, how many was standing up, that don't enter into it.

Q. Have you changed your judgment any or changed your calculations any since you testified before the District Attorney? A. No, I do not think I have in any way.

Q. Now, that is, you have not changed your judgment as to how many this boat would seat? A. No, I said there, I probably didn't have no chance to measure it, and I said it in an offhand way; I did not testify directly or just exactly. 5647

Q. You said just the same before the District Attorney as you did here as to how many she would carry; you said she would carry 90 people? A. Yes.

Q. And in your testimony before the District Attorney you said she would seat 60, didn't you? A. I said in my opinion she would.

Q. And you say you have not changed your judgment any since, so your judgment now is, going on the judgment that you had before, that 60 people could sit down on these seats, isn't that right? A. If you crowd them together, I said you might possibly get 60 in. 5648

Q. So your judgment of her holding 90 people would be there is only 30 standing up? A. That was my judgment at the time.

Q. That is still your judgment, isn't it? Is that right? A. Why, certainly; it must be right, with 90 people on and 60 sitting down.

Q. It was your judgment then there could be no more than 30 stand up in this boat? A. I didn't say no such thing; you can put 30 men in, 30 more men in, and they can stand up. 5649

Q. 90 and 30, you say you can put 120 in there? A. Well, you can take 30 off the seats and they can stand up in there.

Q. Do you say you could stand 120 up in there? A. No, take them off the seats and stand them up, if you want to. You can stand a good many more than 30 in there; that is only a rough estimate.

Q. You say that was the same judgment you

5650 have got now, only 30 people would be standing up when you had 60 sitting down? A. I say more than 30 could stand up.

Q. Assume, Captain, only 36 people can sit on the seats of this boat, do you still say, although your judgment was before you were allowing for 30 people to stand up, you will have the difference between 90 and 36 standing up? A. Well, 36 on the seats; the seats will carry more than that, more than that can sit on the seats, I know.

Q. You are going to have 54 people standing up, and you were only figuring on 30 people standing
5651 up when all the seats were filled before. That was your testimony before the District Attorney, and you do not want to change your opinion now, do you? A. Why, no.

Q. Did you see this testimony you gave before the District Attorney that 90 people could get into the boat, before you testified here? A. No, sir.

Q. Was it read to you at any time? A. No, sir.

Q. Do you remember it? A. I remember it.

Q. Just remember it, that is all? A. I do not say nothing about it.

Q. If the "Linseed King" was running at high speed with 90 or 60 people across the Hudson
5653 River from 96th Street to New Jersey, would you say that it was dangerous under any conditions? A. Under any conditions, what do you mean by that?

Q. Under any conditions that happen in the river. A. You are supposed to run with full speed back and forth across the river, run right ahead, as long as you do not think you will run into something.

Q. You wouldn't say it would be dangerous to run her across the river at full speed with 90 or 60 men in? A. No.

Q. Under any conditions? A. I say under what conditions? 5653

Q. What conditions would you except? A. If a ship was lying there and I was going to run into her, I would have to slow down.

Q. Any other things? A. Oh, yes, a lot of things if there was an old wreck there.

Q. What else? A. If the river was full of heavy ice I would say so.

Q. You told the District Attorney the "Linseed King" was running at full speed with 60 or 90 people across the river, and you were asked, "Would you say it was dangerous," and your answer was, "Yes, in a field of ice." Do you remember that? A. I certainly do. I say in a field of ice it is dangerous. 5654

Q. Your idea of seaworthiness is how many people a boat will carry without sinking? A. No, sir.

Q. What is it? A. A seaworthy boat is a boat that can go back and forth across the river at all times.

Q. Without sinking? A. Without sinking, and carry a certain amount of weight in her. If you are going to load them "decks to" they are not safe. When she is half loaded she is better than when light. 5655

Q. She would not be safe if the water was up to her gunwale? A. If she was loaded right even with her deck, I do not call that very safe.

Q. You mean loaded down as deep as the deck? A. "Decks to", is the proper name, I believe.

Q. And that is your idea of seaworthiness, how many people you can put on her so you will still have a foot of freeboard from the water to the deck? A. Yes, sir.

5656 Q. That is what you mean by seaworthiness? A. If the boat is built to stand the sea. If it is a little bit of a shell that the water will fly over and sink, it is a different thing.

Q. Your definition of seaworthiness does not include the question of safety as to those men in the event of the boat sinking, that is, you are not considering the question of the boat sinking and whether it will be safe for the men in her to get out or not? A. I wasn't figuring on anything like the accident that occurred, but what I was figuring on was her going through the sea.

5657 Q. Don't you realize a vessel to be seaworthy has to have life preservers, so that in the case of an accident they can be used by the passengers? A. Sure, I know that.

Q. Isn't that one of the elements necessary for seaworthiness? A. No, it has nothing to do with seaworthiness, as far as I can see.

Q. Having life preservers has nothing to do with it? A. No.

Q. So packing the men did not have anything to do with it? A. No. Years ago——

Q. Before you come to that, that wouldn't have anything to do with your definition of seaworthi-
5658 ness, whether those men were packed in there tight or not? A. The boat, no, it don't make no difference to the boat.

Mr. Jayne: That is all.

Re-direct examination by Mr. Englar:

Q. Mr. Clayton, have you ever run boats with cabins on them? A. Yes, I have.

Q. What is your present best judgment since you have seen the boat, you attended the survey,

as to how many men would be distributed if they were put in this cabin? A. Well, now, it would be pretty hard for me to answer that question.

Q. I do not want it exactly, but I just want in general what the arrangement would be, do you think? A. How many sitting down and how many standing up, do you mean?

Q. Yes. A. I should imagine that, I should think 45 people could stand up in that boat thoroughly comfortable, around there, and 45 on the seats; they ought to go on the seats all right. I may have said too many when I said 60 on the seats, but 45 could stand up in there all right, and that would only leave 45 on the seats.

Mr. Englar: That is all.

Re-cross examination by Mr. Axtell:

Q. What freeboard would she have with that load? A. With 90 people?

Q. Yes. A. Why, she would have about 2 feet.

Q. Do you remember you testified before the District Attorney on that point? A. No.

Q. Did you say that if she was loaded with 60 or 90 people, how many feet of freeboard do you think she would have, and you answered, 14 inches, probably; then you intimated that with 75 people on her she would have at least that much freeboard. That is not consistent with your present statement. Have you changed your mind since then? A. I might have.

Q. Have you been paid any compensation to go over there and to come here and give an opinion, if we are to regard this statement as an

opinion? Have you been paid for it? A. I haven't; no.

Q. Do you expect to be? A. Why, surely, I expect to get paid.

Q. How much? A. A day's work; I work for $10 a day when I work home.

Q. And you will get $10 for this? A. $10 and expenses.

Mr. Axtell: That is all.

Mr. Englar: I am sorry, but my associate has just called my attention to a question that I ought to have asked of this witness.

By Mr. Englar:

Q. Have you seen the men coming off this boat at the plant after this cabin was put on? A. Yes, I have.

Q. What do you say as to the time it would take for a full load, as to the time it would take for a full load to get out of the cabin and on the dock? A. The way I seen them get out of there the whole load would get out in less than two minutes, in a great big hurry.

Q. Did they use all the exits at that time? A. No, only used the exits at the front, in the bow.

Q. In view of what you have seen, do you consider that there was any particular danger involved in carrying these men inside of the cabin? A. Why, no, I do not see where it could be any more dangerous than any other boat.

Mr. Englar: That is all.

(Witness excused.)